Vol. III.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 339.

TOLEDO SCALE COMPANY, PETITIONER,

vs.

THE COMPUTING SCALE COMPANY.

No. 386.

FIDELITY AND DEPOSIT COMPANY OF MARYLAND AND UNITED STATES FIDELITY AND GUARANTY COMPANY, PETITIONERS,

vs.

THE COMPUTING SCALE COMPANY AND TOLEDO SCALE COMPANY.

IN WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

PETITIONS FOR CERTIORARI FILED MAY 31, 1902.

WRITS OF CERTIORARI AND RETURN FILED AUGUST 6, 1902.

(22,344)

(22,345)

(28,846)

(28,928)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 339.

TOLEDO SCALE COMPANY, PETITIONER,

vs.

THE COMPUTING SCALE COMPANY.

No. 388.

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ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

VOLUME III.

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1 *Placita.*

Pleas in the District Court of the United States for the Northern District of Illinois, Eastern Division, begun and held at the United States Court Room, in the City of Chicago, in said District and Division, before the Honorable Kenesaw M. Landis, District Judge of the United States for the Northern District of Illinois, on the fifth day of March, in the year of our Lord one thousand nine hundred and nineteen, being one of the days of the regular March Term of said Court, begun Monday, the 3rd day of March, and of our Independence the 143rd year.

Present:

Honorable Kenesaw M. Landis, District Judge.
John J. Bradley, U. S. Marshal.
John H. R. Jamar, Clerk.

2 Filed Nov. 5, 1913.

In the District Court of the United States, Northern District of Illinois, Eastern Division.

No. 30024. Chancery.

THE COMPUTING SCALE COMPANY, Plaintiff,

vs.

TOLEDO COMPUTING SCALE COMPANY, Defendant.

Be it remembered that heretofore, to-wit: on the 5th day of November, 1913, there was filed in the Clerk's office of said court a certain Mandate from the United States Circuit Court of Appeals, which said Mandate is in the following words and figures, to-wit:

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Judges of the District Court of the United States for the Northern District of Illinois, Eastern Division, Greeting:

[SEAL.]

Whereas, lately in the District Court of the United States for the Northern District of Illinois, before you, or some of you, in a cause between The Computing Scale Company and Toledo Computing Scale Company, the Decree entered on the twenty-fifth day of June, 1912, is in the words and figures following, to wit:

This cause having come on to be heard on the pleadings and proofs, and having been argued by counsel for the respective parties

and taken under advisement, and the court having duly considered the same and being now fully advised in the premises, it is

Ordered, adjudged and decreed as follows:

I.

That reissued Letters Patent No. 11,536 granted April 28, 1896, to Albert U. Smith and Edmond C. Smith upon the application of Albert U. Smith, as assignee of an undivided one-half interest to Edmond C. Smith, and Letters Patent No. 597,300 granted
3 January 11, 1898, to The E. C. Smith Company, upon the application of and as assignee of Albert U. Smith, are good and valid in law.

II.

That the complainant, The Computing Scale Company, is the sole and exclusive owner of both of said Letters Patent and of the inventions described and claimed therein, and of all rights and privileges of whatsoever nature thereunder and thereto.

III.

That the defendant, Toledo Computing Scale Company, has a regular and established place of business in this District at Chicago, Illinois, and has there and elsewhere infringed both of said Letters Patent, and particularly claims five and six of said reissued Letters Patent No. 11,536, and claim two of Letters Patent No. 597,300, and each of said claims.

IV.

That the complainant do recover of the defendant the profits, gains, and advantages which the defendant has derived, received or made, or shall have derived, received, or made, by reason of its said infringement of said Letters Patent, and that the complainant do also recover of the defendant any and all damages which the complainant has sustained, or shall sustain, by reason of said infringement of said Letters Patent by defendant.

V.

That this cause be and is hereby referred to Charles D. Morrison, a Master of this Court, to take and state an account of said profits, gains, and advantages, and to assess such damages, and to report thereon to the Court with all convenient speed; and that the defendant and its attorneys, officers, agents, clerks, servants, and workmen be and they are hereby directed and required to attend before said Master, from time to time as he shall direct, and produce before him all such books, papers, vouchers, and documents, and submit to such oral examination as he may direct and require.

4 VI.

That a perpetual injunction issue out of and under the seal of this Court, directed to the defendant, Toledo Computing Scale Company, and enjoining it and its officers, agents, attorneys and workmen, and each of them, from making, using or vending, or causing to be made, used or vended the invention and improvement described and claimed in the aforesaid claims, numbers five and six of reissued Letters Patent No. 11,536, and claim two of Letters Patent No. 597,300, or any of them, and from making, using or vending to others to be used, or in any manner disosing of any scales made in accordance with said claims of said Letters Patent, or any of them, or like or similar to the scales which the said defendant has heretofore made, used or vended to others to be used, in infringement of said Letters Patent, and each of them.

VII.

That the complainant do recover of the defendant its costs and disbursements of this suit, to be taxed and have execution against the defendant therefor.

as by the inspection of the transcript of the record of the said District Court, which was brought into the United States Circuit Court of Appeals for the Seventh Circuit by virtue of an appeal agreeably to the act of Congress, in such case made and provided, fully and at large appears.

And Whereas, in the term of October, in the year of our Lord one thousand nine hundred and twelve, the said cause came on to be heard before the said United States Circuit Court of Appeals for the Seventh Circuit, on the said transcript of record, and was argued by counsel:

On Consideration Whereof, It is now here ordered, adjudged and decreed by this Court that the decree of the said District Court in this cause be, and the same is hereby reversed with costs; and that this cause be, and the same is hereby remanded to the said District Court with the direction to dismiss the bill on the second Patent, Number 579,300, and to permit complainant to introduce proof of title to the first P*tae*nt, Re-Issue Number 11,536.

Tuesday, April 15, 1913.

5 And afterwards, to wit: On the fourteenth day of May, 1913, there was filed in the office of the Clerk of this Court a certain Petition for Rehearing, which said Petition for Rehearing was, on the third day of July, 1913, overruled.

And further that the Appellant, Toledo Computing Scale Company recover against the Appellee, The Computing Scale Company the sum of Six Hundred twenty and 75/100 Dollars ($620.75) for its costs herein expended with direction to award execution therefor.

You, therefore, are hereby commanded that such further proceedings be had in said cause, as according to right and justice, and the laws of the United States, ought to be had, the said Decree notwithstanding.

Witness the Honorable Edward D. White, Chief Justice of the United States, the seventeenth day of July in the year of our Lord one thousand nine hundred and thirteen.

EDWARD M. HOLLOWWAY,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

(Endorsed:) Filed Nov. 5, 1913, T. C. MacMillan, Clerk.

And, to-wit: on the 5th day of November, 1913, being one of the days of the regular November term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Kenesaw M. Landis, District Judge, appears the following entry, to-wit:

6 *Order of Nov. 5, 1913.*

United States District Court, Northern District of Illinois, Eastern Division.

Wednesday, November 5, 1913.

Present: Honorable Kenesaw M. Landis, District Judge.

In Equity.

No. 30024.

THE COMPUTING SCALE COMPANY

vs.

TOLEDO COMPUTING SCALE COMPANY.

Order.

This cause coming to be heard this 5th day of November, 1913, on motion of the complainant for leave to file the mandate of the United States Circuit Court of Appeals herein, and for an order pursuant thereto, it is ordered, adjudged and decreed as follows:

I. That complainant have leave to file said mandate of the United States Circuit Court of Appeals.

II. That the decree heretofore entered in this cause on or about the 25th day of June, 1912, be and the same is hereby vacated and set aside.

III. That the complainant have leave to introduce, within thirty days from the date hereof, additional proofs in support of its title to the reissued Letters Patent No. 11536 in suit.

IV. That the defendant have leave to introduce answering proofs respecting complainant's title to said reissued Letters Patent within twenty days after receipt of notice from complainant that its proofs are closed.

V. That upon such additional proofs the cause be reheard as to complainant's title to the Reissued Letters Patent No. 11536.

Mandate.

This mandate of the United States Circuit Court of Appeals of the Seventh Circuit, issued July 17th, 1913, recites the decree of the United States District Court of the Northern District
7 of Illinois, Eastern Division, and then provides as follows:

"It is now here ordered, adjudged and decreed by this court that the decree of the said District Court in this cause be, and the same is hereby, reversed, with costs; and that this cause be, and the same is hereby remanded to the said District Court with the direction to dismiss the bill on the second patent No. 597,300, and to permit the complainant to introduce proof of title to the first patent, re-issue No. 11536."

Thereupon, on November 5th, 1913, motion was made for the Entry of Mandate and for Decree Conforming Therewith, as follows:

Filed Nov. 5, 1913.

Motion for Entry of Mandate and for Decree Conforming Therewith.

Now comes the complainant, the Computing Scale Company, and shows to the Honorable Court that the above entitled cause was commenced in this Court, tried, and decree entered against defendant; that the defendant appealed said cause to the Court of Appeals for the 7th Circuit, where the decree of the Trial Court was reversed in part, and the said Court of Appeals in its opinion filed, said,

"The decree is reversed with the direction * * * to permit complainant to introduce proof of title to the first patent"

meaning by the words "the first patent" the reissue Patent No. 11536; that on July 17, 1913, the mandate issued from the said Court of Appeals to this Honorable Court;

Wherefore, The defendant now moves for an order by this Honorable Court to the effect that

1. The said mandate be filed and entered on record in this cause;

2. The cause be re-docketed in the Court for further proceeding in conformity with the mandate, and

3. An order be entered in this cause giving leave to complainant to introduce proofs of title to Reissue Patent No. 11536.

Accompanying this motion was a notice of the motion and of taking testimony, as follows:

8 *"Notice of Motion and of Taking Testimony."*

Please take notice that on Wednesday, November 5th, 1913, at 10 o'clock a. m., or as soon thereafter as counsel can be heard, we shall present the accompanying motion before His Honor, Judge Landis, to enter the mandate, re-docket the cause and issue order for taking testimony in the above entitled cause.

Please also take notice that contingent upon the granting of our motion, we shall, on Tuesday, November 11th, 1913, commence at 1 p. m. at the office of Thomas A. Mullen, 15 Congress Street, Boston, Massachusetts, take the testimony of William G. Bell, of Boston, Massachusetts, Alfred W. Bell of Boston, Massachusetts, Stoughton Bell, of Boston, Massachusetts, and Albert U. Smith of Saugatuck, Connecticut. This testimony will be taken under the statute, before Albert Garceau, a notary public, in and for the Commonwealth of Massachusetts, County of Suffolk.

Thereupon, on November 5, 1913, Judge Landis entered the following order:

Order of Nov. 5, 1913.

Order.

This cause, coming on to be heard this 5th day of November, 1913, on motion of the complainant for leave to file the mandate of the United States Circuit Court of Appeals herein, and for an order pursuant thereto

It is Ordered, Adjudged and Decreed as follows:

1. That complainant have leave to file said mandate of the United States Circuit Court of Appeals.

2. That, the decree heretofore entered in this cause, on or about the 25th day of June, 1912, be, and the same is hereby vacated and set aside.

3. That the complainant have leave to introduce within 30 days from the date hereof, additional proofs in support of its title to the Reissued Letters Patent No. 11536, in suit.

4. That the defendant have leave to introduce answer proofs respecting complainant's title to said Reissued Letters Patent No. 11536 within 20 days after receipt of notice from the complainant that its proofs are closed.

5. That upon such additional proofs the cause be reheard
9 as to complainant's title to the Reissued Letters Patent No. 11536.

KENESAW M. LANDIS.
Judge.

(Here follows abstract of depositions taken by complainant in further proof of title:)

Thereupon, on April 22, 1914, motion was made by the counsel for the complainant that the re-hearing of the above entitled cause on the additional proofs as to complainant's title to the Reissued Letters Patent No. 11536, be set for a day certain; and May 4, 1914, was set by Judge Landis for said rehearing.

On May 4th, 1914, the cause was re-heard before Judge Landis, on the additional proofs as to complainant's title to the Reissued Letters Patent, No. 11536, and on May 6, 1914, the following decree was entered in the cause:

"The following depositions constitute the additional proofs taken and offered by the complainant under the above order. The said depositions were taken under a stipulation of the parties providing that said depositions should be taken in shorthand upon oral interrogatories by the respective counsel, and when reduced to writing should be considered the depositions of the witnesses without the signature of the witness, and when taken and certified by the Notary Public, should be read in evidence upon the trial of said cause, subject to objections as to competency, relevancy and materiality, to be taken at the trial, but as to objections as to form of questions, only to objections made at the taking of the deposition."

"On the taking of the said depositions Mr. John M. Zane appeared for complainant; Mr. Harrison F. Lyman for the defendant.

"Deposition of Stoughton Bell for the Complainant.

Direct examination:

"My name is Stoughton Bell. I reside at Cambridge Massachusetts, and am a lawyer, and acquainted with W. G. Bell and Charles R. Luce, in his lifetime. Of my knowledge I cannot answer that those gentlemen had any connection with a corporation called the E. C. Smith Company, a coporation of Connecticut,
10 but those gentlemen had a connection with a corporation of Massachusetts, known as the Boston Computing Scale Company. I was clerk of the last named corporation for a short time, and was attorney for the corporation in its dissolution proceedings in our Supreme Court. Among the papers of the Boston Computing Scale Company I did not find any books or papers relating to the E. C. Smith Company except as the E. C. Smith Company is mentioned in the records of the corporation. I think I have not the stock certificate stub book of the E. C. Smith Company.

"I found of the Boston Computing Scale Company the record book that was turned over to me, as clerk, and I had it *is* my desk and it has been in my possession ever since.

There is in those records a record of the by-laws of the Boston Computing Scale Company.

The witness hands the record books to Plaintiff's Counsel.

I know the signature of Alfred W. Bell, and the signature at the end of this record is the signature of Mr. Alfred W. Bell.

The plaintiff offered in evidence from these records the by-laws of the Boston Computing Scale Company, found as a part of the proceedings of the meeting of the said corporation held at the City of Boston, March 4th, 1897, at the office of William G. Bell Company, at the hour of one o'clock P. M., and it is stipulated that a copy of the said book, beginning at the place and date of the meeting of March 4th, 1897, down to the close of said meeting, may be inserted in this deposition, with the same force and effect, and the same admissibility, as if the original book were attached to the said deposition.

Copy of minutes of meeting of March 4th, 1897. Boston, March 4th, 1897. The record recites the calling of the meeting pursuant to notice and that the signers of the foregoing Articles of Association met at one o'clock P. M. this day, at the office above named, for the purpose of organizing said corporation; that the meeting was called to order by William G. Bell, one of the said subscribers, and he was duly chosen chairman of the meeting, and B. D. Cressy was elected temporary clerk by ballot, and was sworn in due form of law to faithfully and impartially perform the duties appertaining to said office of temporary clerk, and thereupon the chairman presented the original Agreement of Association and notice of the meeting, and on motion the same were ordered placed on
11 file with the records of the corporation, and thereupon it was voted that said William G. Bell, Charles R. Luce and Alfred W. Bell, all present at this meeting, having signed said Agreement of Association, do organize into a corporation, under the name of the Boston Computing Scale Company, for the purpose of the sale of computing scales, cash registers, store specialties and general merchandise business in said City of Boston, and on motion it was voted that the capital stock of said corporation be and is fixed at one thousand dollars, divided into ten shares of the par value of one hundred dollars each, and on motion it was voted to open subscription to said capital stock, and Charles R. Luce, of Boston, Massachusetts, agreed to take and pay for five shares, and William G. Bell, of West Newton, Massachusetts, agreed to take and pay for five shares, and on motion it was voted to proceed to the election of a president of said corporation, by ballot, and in pursuance thereof Charles R. Luce was unanimously elected president, and on motion it was voted to proceed to the election of a board of directors, and by ballot, and in pursuance thereof, Charles R. Luce, William G. Bell and Alfred W. Bell were elected a board of directors of said corporation, and on motion it was voted to proceed to the election of a treasurer of said corporation by ballot, and in pursuance thereof, William G. Bell was unanimously elected treasurer of said corporation, and on motion it was voted to proceed to the election of a clerk of said corporation, by ballot, and Alfred W. Bell was unanimously elected clerk of said corporation, and he was then sworn, in due form of

law, and on motion it was voted that the following Code of By-Laws be and is hereby adopted for the government of said corporation, to wit: By-Laws, Article 1, Officers: Provided that said officers shall be a president, treasurer, clerk and a board of directors of not less than three, the president to be chosen by the board, and from among them, annually, the directors, treasurer and clerk to be chosen annually by the stockholders, by ballot, and to hold their offices for one year, and until others are qualified and chosen in their stead.

Article 2. Duties.—Provided that the said officers should perform the duties relating to their respective offices. The president to preside at all meetings of the board of directors and stockholders when present. To sign, as president, all certificates of stock, and, in
12 his discretion, call special meetings of the board, and stockholders, and vote therein, and, in his absence, the directors may designate such one of their number as may be agreed upon to act in his stead; that the treasurer shall keep safely the funds and property of the corporation and give bond in such sum as the board of directors may require, and keep an account of the business and expenses of the corporation, and when required by the board, to submit a written statement thereof, and, as treasurer, to sign all certificates of stock and keep a list in a book for the purpose, of all persons holding said stock, which shall be non-assessable. The clerk shall keep all records of the corporation, issue notices, and in his absence a clerk pro tem. may be chosen to act in his stead. The clerk shall be sworn and shall record all votes in a book to be kept for that purpose, and shall perform such other duties as may be assigned to him. The immediate government and direction of the affairs of the corporation shall be vested in a board who may fill any vacancy existing which they may deem necessary, and a majority of them shall constitute a quorum, and they may call meetings of the stockholders in their discretion.

Article 3. Meetings, etc.—Provided that the annual meeting of the stockholders be held on the first Monday in March of each year, for the election of officers and the transaction of necessary business, a majority in interest of the stockholders, to constitute a quorum. For time to hold stockholders' meeting, see vote of stockholders April 5, 1898. Time changed to the first Monday in July. Notice of the annual meeting and of the subsequent meeting of the stockholders to be given at least seven days prior to such meetings of the stockholders, delivered personally or sent properly by mail. Shares of this corporation may be transferred by endorsement on the certificate of stock and surrender of same and noted on books of the corporation.

Article 4. Seal.—Provided for a seal bearing the name of the corporation and the year of its incorporation.

Article 5. Amendments.—Provided that the by-laws may be altered or amended at any meeting of the corporation by a vote of

the majority of the capital stock of said corporation issue, provided that notice of such alteration or amendment be given in the call for such meeting.

Thereupon the corporation having been duly organized, officers elected and by-laws adopted, it was voted to adjourn.

13 The same was attested to be a true record by the Temporary Clerk, and attested a true record by Alfred W. Bell, Clerk of the corporation.

On the same day a meeting of the board of directors was held and the meeting was called to order by Alfred W. Bell, and Charles R. Luce was elected chairman of said meeting in due form, and on motion it was voted to proceed to the election of a president of the Boston Computing Scale Company, by ballot, and in pursuance thereof, Charles R. Luce was unanimously elected president of said corporation and accepted said office.

The record is attested to be a true record by the said Temporary Clark, and attested to be a true record by Alfred W. Bell, Clerk of the corporation.

The witness resumed his testimony: I have found in these records a record of the corporation pertaining to a sale of the patents of the Boston Computing Scale Company to the Dayton Company. I think the first record is under date of February 6th, 1899.

The directors of the corporation at that time are shown, by the record under date of October 3rd, 1898. The signature attached to the minutes of the stockholders' meeting of October 3rd, 1898, is the signature of Alfred W. Bell.

The record of the meeting of the stockholders of the Boston Computing Scale Company, held at the office of the treasurer, William G. Bell, was offered in evidence under the foregoing stipulation as to a copy, and is as follows:

October 3rd, 1898. Adjourned meeting of stockholders of the Boston Computing Scale Company, held at the office of treasurer William C. Bell, 50 Commercial Street, Boston, Mass., at 10 o'clock A. M. Present, William G. Bell, Charles R. Luce and A. W. Bell, a majority of the stock.

The meeting was called to order by the president. The treasurer made his report, and on motion it was voted to accept the said report and to proceed to the election of a clerk for the ensuing year, and in pursuance thereof Alfred W. Bell was unanimously elected and duly sworn, and on motion it was voted to proceed to the election of a broad of directors, and in pursuance thereof, Charles R. Luce, William G. Bell and Alfred W. Bell were unanimously elected directors, and thereupon the meeting adjourned.

Said record is attested under the hand of Alfred W. Bell, Clerk, to be a true record.

14 The witness resumed. The signature attached to the minutes of the meeting of the board of directors of February 6th, 1899, is the signature of Alfred W. Bell.

Said record was thereupon offered in evidence under the foregoing stipulation, and is as follows:

Boston, February 6th, 1899. Special meeting of the board of directors of the Boston Computing Scale Company at the office of the treasurer, 54 Commercial Street, Boston, at 9 o'clock A. M. Present, Charles R. Luce, William G. Bell and Alfred W. Bell.

The meeting was called to order by the president, and it was voted that the president be, and he hereby is, authorized to sign the assignment of all the property of the Boston Computing Scale Company located in Saugatuck, Connecticut, to the Computing Scale Company of Dayton, Ohio, and to make the delivery of the same, in person, to their representative, Mr. O. O. Ozias, and it was voted that the sale of the property, patents, etc., of the Boston Computing Scale Company, made by Mr. A. D. S. Bell to the Computing Scale Company of Dayton, Ohio be and it is hereby ratified, and that the president and treasurer be and they hereby are authorized to sign all the necessary papers for the completion of the same, and thereupon the meeting adjourned.

The said record was attested a true copy by Alfred W. Bell, Clerk.

Thereupon the witness stated that the signature to the minutes of the meeting of February 8th, 1899, is the signature of Mr. Alfred W. Bell, and the said minutes of the special meeting of the board of directors of the Boston Computing Scale Company, held at the office of the treasurer, 54 Commercial Street, Boston, February 8th, 1899, were offered in evidence under the foregoing stipulation as to a copy, and were as follows:

Boston, February 8th, 1899. Special meeting of the board of directors of the Boston Computing Scale Company at the office of the treasurer. Present, the directors aforesaid.

The meeting was called to order by the president, and voted that the president be, and he is hereby authorized to sign the assignment of all the property of the Boston Computing Scale Company at Saugatuck, Connecticut, to the Computing Scale Company of Dayton, Ohio, and to make delivery, in person, of the same, to their representative, Mr. O. O. Ozias, and it was voted that the sale of the property and patents of the Boston Computing Scale Company be and is hereby ratified, and that the president and treasurer be and they hereby are authorized to sign all the necessary papers for the completion of the same, and on motion it was voted to adjourn.

The said record was attested a true copy by Alfred W. Bell, Clerk.

The witness resumed: In these records I find a record of the meeting referring to a transfer by the E. C. Smith Company to the Boston Computing Scale Company. The date of the first meeting, I think, is April 7th, 1898, and the signature to the minutes of that meeting is the signature of Mr. Alfred W. Bell.

The copy of said minutes of April 7th, 1898, was offered in evidence under the above stipulation as to a copy, as follows:

Boston, April 7th, 1898. Special meeting of the directors of the Boston Computing Scale Company, at the office of the treasurer,

William G. Bell, 50 Commercial street, Boston, Mass., April 7th, 1898, at 3 o'clock P. M. Present: William G. Bell, Charles R. Luce and Alfred W. Bell.

The clerk, pro tem, of the E. C. Smith Company, read the record of the meeting of the board of directors held this day at the office of its treasurer.

On motion of Mr. A. W. Bell it was voted that the Boston Computing Scale Company confirm the proposition of the treasurer of the E. C. Smith Company for purchasing from the E. C. Smith Company all their property of every name and nature, including the book accounts, cash on hand, plant, machinery, tools, dies, etc., and also all merchandise, either manufactured or in process of manufacture; also all patents and improvements, either granted or for which application has been made, either to the U. S. Government or the Canadian Government, and to pay to the treasurer of the E. C. Smith Company for said property, the sum of one thousand dollars.

Voted that the treasurer of the Boston Computing Scale Company be hereby authorized to pay any debt now standing on the books of the E. C. Smith Company, as also to pay for any merchandise used in carrying on the business up to the time of the dissolution of said company.

Voted that the treasurer be authorized to accept said property in the name of this corporation, the Boston Computing Scale Company.

Voted that the treasurer be directed to instruct Charles A. Mitchell, who is now in our employ at Saugatuck, to take possession
16 of such property in the name of this corporation, now held and owned by the E. C. Smith Co., located at Saugatuck, Connecticut.

Voted that the treasurer be authorized to notify our assistant treasurer at Saugatuck of this action, and also to notify Mr. A. U. Smith, who has recently been in the employ of the E. C. Smith Company.

On motion it was voted to adjourn, and the said record was attested a true record by Alfred W. Bell, Clerk.

And the further record appeared: Boston, April 7th, 1898. Certificate that the said clerk made oath before G. I. Lane that the minutes of the meeting as above recorded were true.

The witness resumed: I have no memory of having ever had possession of any of the E. C. Smith Company's books. I acted as clerk only during the time that the Boston Computing Scale Company was being dissolved. After these transactions I took steps to dissolve the corporation.

The plaintiff then offered in evidence the certified copy, under the seal of the Commonwealth of Massachusetts, and under the hand of the Acting Secretary of the Commonwealth, of the certificate of organization of the Boston Computing Scale Company, and a certified copy of the certificate of Condition of the Boston Computing Scale Company, filed in the office of the Secretary of the Commonwealth, October 7th, 1898; also a certified copy of said Certificate of Condition, filed July 3rd, 1899, in the same office, under the same hand

and seal as the preceding paper, and the certified copy from the records of the Supreme Judicial Court of the Commonwealth of Massachusetts, of a certain petition filed October 27th, 1900, in the matter of the dissolution of the Boston Computing Scale Company, which said papers were attached to said deposition, and are to the effect aforesaid.

The witness was shown the petition for dissolution and said that he believed the paper presented to him was a copy of the petition. He was shown another paper purporting to be a final decree in the matter of the dissolution of the Boston Computing Scale Company, and said he believed that to be a copy of said decree.

The plaintiff next offered in evidence the return of the Clerk of the Supreme Judicial Court of the County of Suffolk, making return of the dissolution of the Boston Computing Scale Company.

The witness resumed: I could not find in my letter-press copy or letter books anything pertaining to this matter of the
17 transfer by the Boston Computing Scale Company to the Dayton Company of these particular patents. I think, if my memory serves me right, that these transfers were made before I became active in the Company. I made a search and I could find nothing else.

The witness was shown a paper purporting to be an assignment by the Boston Computing Scale Company to the Computing Scale Company of Dayton, Ohio, and said that he was acquainted with the signature of William G. Bell and with the signature of Charles R. Luce, and that the signatures were the signatures of those men.

The witness was also shown a document purporting to be an assignment by the E. C. Smith Company to the Boston Computing Scale Company, and said that the two signatures of Charles R. Luce and William G. Bell on that paper are the signatures of those gentlemen; that he was acquainted with Mr. Luce and also with Mr. William G. Bell, and acquainted with their signatures.

The cross-examination was waived at this point.

The witness further testified, in answer to questions of complainant's counsel: The signatures attesting the meeting of the stockholders of the Boston Computing Scale Company of November 22nd, 1899, and the meeting of the stockholders of October 27th, 1900, are my signatures. I was then acting as clerk of the corporation, and the signature to the meeting of the board of directors of the Boston Computing Scale Company of June 28th, 1899, is the signature of Alfred W. Bell, and the signature of O. O. Oziaz to the power of attorney to William G. Bell that is pasted in this record book was signed by Mr. Oziaz in my presence.

The said minutes, under the stipulation as aforesaid, together with the power of attorney aforesaid, were offered in evidence, and are as follows:

Boston, June 28th, 1899. Meeting of the board of directors of the Boston Computing Scale Company at the office of the treasurer, William G. Bell, 50 Commercial street, Boston, Mass. Patent, Charles R. Luce, William G. Bell and Alfred W. Bell. It was voted

that the reading of the records of the meeting approving the report of the treasurer be omitted, and the treasurer reported all outstanding bills paid, and that the obligations to repair scales had been assumed by the Computing Scale Company of Dayton, Ohio,
18 which relieved the company of all obligations known by him, and for this reason he recommended that a vote be taken authorizing the treasurer to wind up the affairs of the corporation and dissolve the same at the earliest possible date.

On motion the above report was accepted and recommendations adopted, and thereupon it was voted to adjourn, and the said record was attested as a true record by Alfred W. Bell, Clerk.

Boston, November 22nd, 1899. Meeting of the stockholders of the Boston Computing Scale Company, at the office of the treasurer, 50 Commercial street, Boston, Mass. November 22, 1899. The meeting was called to order by the president, and the call for the meeting read by the clerk. Present, Charles R. Luce, president, William G. Bell, treasurer, and Alfred W. Bell, director. Whole number of shares represented, ten.

On motion it was voted to proceed to the election of a clerk for the ensuing year, and in pursuance thereof Stoughton Bell was unanimously elected, and thereupon was duly sworn to perform the duties of his office.

It was also voted that the assets of the corporation, consisting of merchandise, bills receivable and cash on hand, be turned over to William G. Bell, as trustee for Charles R. Luce and William G. Bell, and the said William G. Bell was authorized in the name of the corporation, to collect the same, and to divide the net proceeds equitably between Charles R. Luce and William G. Bell, making no charge for his services.

On motion it was voted to proceed to the election of board of directors for the ensuing year, and O. O. Oziaz, Stoughton Bell and William G. Bell were unanimously elected.

Whereupon the meeting adjourned, and the said record was attested a true record by Stoughton Bell, Clerk.

Boston, October 27th, 1900. Meeting of the stockholders of the Boston Computing Scale Company, at the office of William G. Bell, 52 Commercial Street, at ten o'clock A. M.

The meeting was called to order by the president. Present: William G. Bell, one share; Stoughton Bell, one share, and eight shares held by O. O. Oziaz, represented by William G. Bell. Whole number represented, ten.

On motion it was voted to omit the reading of the record of the last meeting, and voted to dissolve, in accordance with the
19 call, the corporation, and that Stoughton Bell be authorized to take the necessary legal steps therefor, and thereupon it was voted to adjourn.

The said record was attested by the signature of Stoughton Bell, Clerk.

Power of attorney in the said book, dated October 20th, 1900, recited that the undersigned stockholder in the Boston Computing Scale Company hereby appoints William G. Bell his attorney, with

power of substitution, and in his name to vote for the dissolution of said corporation at a meeting of the stockholders, etc. Signed, O. O. Ozias, and dated October 20th, 1900.

Certified copy of Certificate of Organization of the Boston Computing Scale Company, showing purpose of corporation sale of computing scales, cash registers, store specialties and general merchandise business: names of subscribers being William G. Bell, Charles R. Luce and Alfred W. Bell.

Certificate of Condition of the condition of the Boston Computing Scale Company, filed October 5, 1898, showing assets of $9,372, capital stock of $1,000, debts $8,150, balance profit and loss, $222, and share holders Charles R. Luce, five shares, William G. Bell, five shares.

Certificate of Condition of the Boston Computing Scale Company, filed July 3, 1899, showing assets estimated at $1,000 and liabilities, being capital stock $1,000, and share holders William G. Bell, five shares, and Charles R. Luce, five shares.

Petition to the Supreme Judicial Court of the Commonwealth of Massachusetts for dissolution of the Boston Computing Scale Company. Signed by O. O. Ozias, eight shares, William G. Bell one share and Stoughton Bell, one share.

Certificate by Clerk of the Supreme Judicial Court as to dissolution of Boston Computing Scale Company under Decree dated February 12, 1901.

WILLIAM G. BELL, a witness for the complainant:

My name is William Gibson Bell. I reside at West Newton, Massachusetts. I was connected with the Boston Computing Scale Company of Massachusetts, and am the William G. Bell mentioned in the records as a stockholder. I had full knowledge of the acquisition by the Boston Computing Scale Company of the patents for an automatic computing scale obtained from the E. C. Smith
20 Company, I furnishing all of the money. I took part personally in the acquisition, and I was acquainted with the records that were made by the Boston Computing Scale Company in this book which has been offered in evidence. Among my papers I have made search for books and papers of the E. C. Smith Company of Connecticut. I have here with me the stock book that was used. I found nothing else of value. I have a whole barrel of stuff, but there was nothing else that showed anything about the transfer. The stock book which I produce is the original stock book of the E. C. Smith Company, transferred to us.

The certificate No. 11 shown by stub of stock book, purporting to be for two shares issued to Alfred U. Smith, I have not been able to find. I have hunted for it, and the certificate No. 10, purporting to be for 98 shares, to Charles R. Luce, I could not find. The certificate No. 8 for 98 shares issued to William G. Bell, attached to the stub.

Thereupon the plaintiff offered in evidence from the stock book produced by William G. Bell the stub No. 1, and its certificate at-

tached thereto. The plaintiff offered in evidence, from the stock book produced by William G. Bell the stub No. 2 and its certificate attached thereto, and the stub book certificate No. 3 and its certificate attached thereto, and the stub of certificate No. 4 with its certificate attached thereto, and so on, to and including certificate No. 11.

And it was agreed that the stubs and issued certificates may be inserted in this deposition by copy, and that the original record may be inserted in this deposition by copy.

The copy of stub of certificate No. 1 showed that it was for 99 shares issued to Edmond C. Smith, dated September 17th, 1896, and contained the receipt of Edmond C. Smith for said certificate, and the certificate No. 1 showed that it was for 99 shares in the E. C. Smith Company, incorporated under the laws of the State of Connecticut, with a capital stock of five thousand dollars, on which five dollars per share had been paid, and certified that Edmond C. Smith was the owner of 99 shares of the capital stock of the E. C. Smith Company, transferable only on the books of the corporation on surrender of this certificate, and the said certificate, after the attesting clause, was signed by Orlando I. Allen, Secretary, and Edmond C. Smith, president. Endorsed on the back thereof was a transfer to Edmond C. Smith of two shares, and to A. U. Smith of 97
21 shares of the capital stock named in the certificate signed by Edmond C. Smith, dated April 17th, 1897, and witnessed in the presence of O. I. Allen. The copy of stub of certificate No. 2 was for 99 shares, issued to Albert U. Smith, dated September 17th, 1897, and contained the receipt of said Albert U. Smith. The copy of the certificate was of the tenor of the certificate aforesaid for 99 shares, signed as above, and endorsed on the back, with the transfer by Albert U. Smith duly witnessed.

The remaining stubs were of the form and character aforesaid, and the remaining certificates were of the form and character aforesaid, and were for the following amounts:

Stub No. 3, dated September 17th, 1896, for two shares, issued to Orlando I. Allen. Certificate No. 3 for two chares issued to Orlando I. Allen, endorsed by a transfer upon the back by Orlando I. Allen. Stub of certificate No. 4 for two shares to Edmond C. Smith. Certificate No. 4 for two shares endorsed upon the back thereof by Edmond C. Smith. Stub No. 5 for 97 shares to A. U. Smith. Certificate No. 5 for 97 shares to Albert U. Smith, endorsed upon the back with the transfer by Albert U. Smith. Stub No. 6 for two shares to Alfred W. Bell; certificate No. 6 for two shares to Alfred W. Bell, endorsed in blank. Stub No. 7 for 100 shares, issued to Charles R. Luce, dated January 18th, 1898. Certificate No. 7 for 100 shares to Charles R. Luce, and endorsed on the back, canceled by issue for 98 shares. Certificate No. 10 to Charles R. Luce and of two shares, certificate No. 9, to Edmond C. Smith, and the transfer in blank, signed Charles R. Luce, dated April 6th, 1898. Stub No. 8 for certificate No. 8 for 98 shares, issued to William G. Bell, West Newton, Massachusetts, dated January 18th, 1898. Certificate No. 8 for 98 shares to William G. Bell, endorsed with a transfer upon the back, "Sold to Dayton Computing Scale Company, March 18th, 1899."

Stub of certificate No. 9 for two shares issued to Edmond C. Smith of Saugatuck, Connecticut, dated April 6th, 1899, transferred from Charles R. Luce. Certificate No. 9 for two shares to Edmond C. Smith, endorsed upon the face: "This certificate void, not issued and canceled by issue of certificate No. 9." Stub of certificate No. 10 for 98 shares, issued to Charles R. Luce, dated April 6th, 1898, transferred from Charles R. Luce. Stub of certificate No. 11 for two shares, issued to Albert U. Smith, dated April 11th, 1898.

22 The witness resumed: At the time of the purchase by the Boston Computing Scale Company from the E. C. Smith Company, the Boston Computing Scale Company bought everything, as I remember it.

The witness was shown a paper marked upon the back "Original assignment B, Annie C. Courtney, Notary Public, Chicago, September 11th, 1911," and said that he recognized the signatures upon the paper. I don't think I should recognize the signature of the President of the E. C. Smith Company; that he knew Mr. Luce's signature, and said that for a few days the Company was used until they organized.

Then testimony as follows:

Q. 21. What you did was to acquire the stock of the E. C. Smith Company?

A. We allowed it either to die or pass out of existence.

Q. 22. But you substituted Mr. Luce as President, and yourself as Treasurer, so as to make this transfer?

A. Yes.

By Mr. Lyman: I object to that as leading.

By Mr. Zane: I will have to put it in another form.

Q. 23. How did it come that yourself, as treasurer, and Mr. Luce, as president of the E. C. Smith Company, were signing this assignment. Just explain on the record how Mr. Luce came to be president and how you came to be secretary?

A. I came to be treasurer, you mean.

By Mr. Lyman: I object to that question as leading, and also not calling for the best evidence.

A. I would like to talk in my own way. We secured all the right, title, etc., to the patents, and that was practically all there was to it, and the stock of the E. C. Smith Company was assigned to Mr. Luce and myself. Then, in order to make the transfers of these patents legal, we called a meeting of the E. C. Smith Company, of which we were it, and made the assignment to the Boston Computing Scale Company, of which Mr. Luce and myself were practically all there was to it.

Q. 24. What did you do as to substituting officers for the E. C. Smith Company, if anything?

By Mr. Lyman: I object to that as leading, and also as not calling for the best evidence.

Q. 25. You have already stated, if I understood you correctly, that upon your acquiring all the stock of the E. C. Smith
23 Company, you had a substitution of officers made. That is, yourself and Mr. Luce, as officers——

A. We became the officers of the——

Q. 25. He objects to that. Now, what was done in regard to these officers, without my asking you a leading question?

By Mr. Lyman: I object to that as leading, and not accurately stated with the testimony of the witness.

Q. 25. You have already stated that yourself and Mr. Luce acquired all the stock of the E. C. Smith Company. When you did acquire the stock, what did you do?

A. We organized, with Mr. Luce as president of the E. C. Smith Company and William G. Bell as treasurer.

Q. 28. And then what did you do?

A. Then we formed the Boston Computing Scale Company, under the laws of the State of Massachusetts, capital $1,000.00, electing Mr. Luce, if I remember, as president, and myself as treasurer.

Q. 29. Now that paper I have shown you here—do you know the signatures to that assignment?

A. Absolutely.

Q. 30. Is that your signature to the paper?

A. Yes, sir.

Q. 31. Whose is the other signature?

A. Charles R. Luce, my associate.

Q. 32. Now do you know what, if any position Charles R. Luce held in the E. C. Smith Company when he signed that paper?

By Mr. Lyman: I object to that as asking for secondary evidence.

Q. 23. I ask you if you know what position he held—what office, I mean?

A. My impression is that he held the same office, president, that he held in the Boston Computing Scale Company; that is my impression.

Q. 34. What office did you hold?

By Mr. Lyman: Same objection.

A. Treasurer. I paid all the checks and all the bills, a lot of money, too.

Q. 35. I think you have already stated that you have not been able to find the records of these directors' meetings or stockholders' meetings of the E. C. Smith Company?

A. I have not, sir.

Q. 36. How have you hunted for them, where?

24 A. I have given two and a half days to looking over, not only my own papers, that is, of the William G. Bell Company, and my own personal papers, but also the papers that we found pertaining to the E. C. Smith Company.

Q. 37. Were you present at the meting of the board of directors when you were elected treasurer of the E. C. Smith Company?

A. I have no doubt of it.

Q. 38. The E. C. Smith Company had no corporate seal, had it?

By Mr. Lyman: I object to that as leading.

A. Not to my knowledge.

Thereupon the assignment shown to the witness was marked by the stenographer, Helen M. McDermott, November 11, 1913.

The witness was shown a paper purporting to be an assignment by the Boston Computing Scale Company to the Computing Scale Company of Ohio of certain patents, and was asked if he executed that paper. I did. I recognize the signatures. The signature, William G. Bell, is my signature, and the signature of Charles R. Luce is his signature. Charles R. Luce is no longer living. He died several years ago. I can't tell you just when.

Cross-examination:

I could not say that any secretary was appointed for the E. C. Smith Company at any time. I should say, if you ask me my judgment, that there was. I cannot remember without refreshing my memory from the book. This meeting that we held to elect a president is so indistinct that I could not make any statement in regard to it. It was done. That is the most I can recall. The stock certificate book here is the only method I have of ascertaining who were the owners of the stock in the E. C. Smith Company at that time. We have no other record than the stock book. That document was signed undoubtedly in my office. All the business was transacted in the William G. Bell Company's, my private office. I have no distinct recollection of signing that document. Have no clear recollection about the proceedings connected with the transfer, except as this paper here recalls to my mind what was done. I recognize the paper itself. I have no distinct recollection of what steps were taken preparatory to the signing of that paper, and I do not think I could make any statement in regard to that. I have searched, in the first place, for the records that I speak of,, in a barrel of stuff that we had pertaining to such matters; that is the books of account and orders, order blanks and everything of that sort. Finally I went into our storage room for documents of that kind, and looked through the shelves, thinking that I might find something there, but I found nothing. I say nothing. I mean found nothing of interest pertaining to this thing. Perhaps I found an order book of the Computing Scale Company.

Redirect examination.

By Mr. Zane:

R. D. Q. 53. By secretary, you mean clerk of the board. You don't mean such an officer of the corporation as secretary?

A. Whoever kept the records of the meeting and entered things up—the clerk who kept the records.

R. D. Q. 54. You never knew of any such officer of the E. C. Smith Company as a secretary, an officer along with the president or treasurer?

A. I don't remember anything of that sort.

ALBERT U. SMITH, a witness for complainant:

My full name is Albert U. Smith. I reside at Saugatuck, Connecticut, Town of Westport. I have no occupation. I remember these patents that are spoken of here for a computing scale. I was the inventor. After I invented the computing scale, I formed a corporation with E. C. Smith.

I presume I remember this certificate for two shares to Mr. Allen, although I had practically nothing to do with the business end, or had nothing to do in connection with it. Mr. Allen was a man employed in the E. C. Smith Company business. E. C. Smith was my uncle.

The complainant here offered in evidence a certified copy of the Articles of incorporation of the E. C. Smith Company, showing the incorporation of the company.

After that time I know the E. C. Smith Company sold out to the Boston Computing Scale Company. I do not know what be-
26 came of the stock of the E. C. Smith Company at that time. I suppose it was sold along with the rest. Everything, so far as I know, was turned over to the Boston Computing Scale Company.

I presume I was present when the patents themselves and the physical property at Saugatuck was turned over to the Boston Computing Scale Company, only I can't call it to mind. I can't remember anything in connection with it. I could not tell you the officers of the E. C. Smith Company. I could not even tell you what office I held, if any. I know the company was formed principally for our own convenience. The company had a president, and I suppose it had a treasurer. I do not know of it ever having a seal. I don't think it had any such officer as secretary. I don't know of any one that acted in that capacity.

So far as I was personally concerned I knew of the transfer from the E. C. Smith Company to the Boston Computing Scale Company. I acquiesced in it and was satisfied with it. I have no knowledge of any meeting where the new officers, Mr. Luce and Mr. William G. Bell were substituted for the old officers of the E. C. Smith Company. I assume that Mr. Luce and Mr. William G. Bell did become president and treasurer respectively. I have no way of knowing. They went under that name anyway. They acted under that name. I could not tell you what office in the E. C. Smith Company Mr. Luce acted under.

Q. 27. Do you know the signatures of Mr. Luce and Mr. Bell?

A. I would know the signature of Mr. Luce.

The paper which purports to be an assignment by the E. C. Smith Company to the Boston Computing Scale Company, marked as here-

tofore, *are* recognized, and the signature is Mr. Luce's signature. I do not know what became of certificate of stock for two shares of the E. C. Smith Company that stood in my name. I have made a hunt down there at Saugatuck for records of the E. C. Smith Company and shares of stock. I have looked where I would naturally find anything of that kind and I did not find it. I could not find anything. I have no knowledge of the transfer by the Boston Computing Scale Company of these patents to the Computing Scale Company of Ohio. I have knowledge of the Computing Scale Company of Ohio making complete scales under these patents. I manufactured the scales. I was employed by the Computing Scale Company of Dayton.

27 Cross-examination:

I know nothing of the affairs of the Boston Computing Scale Company. I do not know what office Mr. William G. Bell held in the E. C. Smith Company, nor what, if any office, he assumed to hold.

The E. C. Smith Company might have had directors, but I have no knowledge of it. I could not say whether they had directors. I presume they had by-laws, but I have no knowledge of that.

Certified copy of Articles of Association of the E. C. Smith Company, a corporation organized under the laws of the State of Connecticut, having a capital stock of $5,000 divided into two hundred shares of a par value of $25 each, showing name of stockholders to be Edmond C. Smith, 99 shares, Albert U. Smith, 99 shares and O. I. Allen, 2 shares, with 20 per cent. paid in, and Directors Edmond C. Smith, Albert U. Smith and Orlando I. Allen.

ALFRED WHITNEY BELL, witness for complainant:

My name is Alfred Whitney Bell. I reside at West Newton; I knew William G. Bell; I am his son. I remember a corporation called the E. C. Smith Company of Connecticut. I know there was such a company, that was all. I never had anything to do with it. I am the Alfred W. Bell who signed the various minutes of the Boston Computing Scale Company as clerk. The stock book of the E. C. Smith Company showing a certificate for two shares to me, I don't remember. It is so long ago. I don't know how those two shares came to be issued to me. I think I had no personal interest but represented my father. I knew at the time of the transfer by the E. C. Smith Company to the Boston Computing Scale Company of the patents, that there were patents. I couldn't say now as to any general knowledge at the time of the transfer. Probably I had, but I couldn't say. I know the signature of Charles R. Luce.

The witness was shown the paper marked by the stenographer as aforesaid, purporting to be an assignment by the E. C. Smith Computing Scale Company, and said:

28 The William G. Bell stock is all right, and I should say that was Mr. Luce's signature. I know Mr. Bell's signature if I see it anywhere. I recognize the signatures to another

paper which you show me, purporting to be an assignment by the Boston Computing Scale Company to the Computing Scale Company of Ohio. I am sure of the William G. signature and the Luce I should say was his. Of course, he has been dead some years and I have not seen his signature for sometime, but as I remember his signature, that would be it. I have no recollection whether I ever received this certificate for two shares of the E. C. Smith Company, whether it was ever delivered to me. I don't remember that. I don't remember of acting for a short time as director of the E. C. Smith Company, nor do I remember who the officers of E. C. Smith Company were at any time. I don't remember my father being treasurer and Luce the president. I have not assisted in making the search for the papers of the E. C. Smith Company. I recognize the entry of a special meeting of the directors of the Boston Computing Scale Company of April 7, 1898, attested by my signature as clerk. Having looked that entry over, it refreshes my recollection in regard to the E. C. Smith Company selling out its patents to the Boston Computing Scale Company. I remember that now. I remember that the patents were turned over. I do not know whether that was with my knowledge at that time. I have never objected to the patents being turned over by the E. C. Smith Company to the Boston Computing Scale Company, and I should say as the fact that that transfer was with my knowledge and consent.

Thereupon the complainant offered in evidence the two assignments, being that of the E. C. Smith Company and the Boston Computing Scale Company, and the second assignment being that of the Boston Computing Scale Company and the Computing Scale Company of Ohio, and the witness said:

I suppose the patents referred to in the entry on the books were the patents of the scale.

The defendant offered the records of the special meeting of the board of directors on the 29th day of April, 1898, as follows:

"April 29, 1898, special meeting of the board of directors of the Boston Computing Scale Co., Boston, Mass., at the office of the treasurer, 52 Commercial Street, April 29, 1898. Present, Charles R. Luce, William G. Bell. Alfred W. Bell. The president called the meeting to order. The clerk read the records of the last meeting and same were approved.

29 "Treasurer reported that in accordance with vote passed by board of directors April 12th he had issued to Charles R. Luce a dividend note dated April 12th for $1,500, payable on demand without interest, countersigned by the president; also to William G. Bell a dividend note dated April 12th for $1,500, payable on demand without interest, countersigned by the president.

The treasurer also stated the by-laws of the corporation did not authorize manufacturing, and therefore he would suggest that the Boston Computing Scale Co. sell the plant at Saugatuck to Charles R. Luce and Alfred W. Bell for the sum of $1,000 for share and share alike, they being equal owners in said company. This sale

to include property of every name and nature, including all patents and improvements recently owned by the E. C. Smith Co. and now owned by the Boston Computing Scale Co., and that the treasurer be authorized to accept the note of Charles R. Luce for $500 and the note of Alfred W. Bell for $500, in full payment therefor. On motion, it was so voted.

On motion it was voted that the treasurer of the corporation be and hereby is authorized to execute any and all papers necessary for the transfer of said property, patents, improvements, etc., to said Charles R. Luce and Alfred W. Bell, share and share alike. Voted in consideration of said sale to said Charles R. Luce and Alfred W. Bell that it be distinctly understood and agreed on the part of said Luce and Bell, participants in this agreement and sale at this time, that they shall furnish the Boston Computing Scale Co. or their assigns computing scales as now manufactured or improvements which may be hereafter made on the same terms and conditions as they have been heretofore furnished by the E. C. Smith Co., and this agreement shall hold good until the expiration of patents, unless mutually agreed otherwise by all parties this day interested in said sale.

The meeting then adjourned and the record is attested by Alfred W. Bell." The witness then stated:

I don't recall this meeting or the facts as to this transaction. I have absolutely forgotten that there was any such thing until I saw that in the record book. I don't remember whether there was a transfer to me and Mr. Luce of the patents and other property. I do not remember whether I executed any note for $500 to the Boston Computing Scale Company in payment for that transfer. If I had executed such a note it would indicate, I think if I had made the note, which I do not know that I did, that there was a transfer of the property made to me.

A subsequent entry in the book under date of January 24, 1899, was also offered in evidence by the defendant, which states that it was voted:

"That whereas there was a present prospect of disposing of the property at Saugatuck as also of the business of the Boston Computing Scale Company, to cancel the sale of property of every name and nature recently owned by the E. C. Smith Company, including all patents, and the cancelling of unpaid notes of Charles R. Luce and Alfred W. Bell of $500 each given for the same."

I should say that note was executed if that was written. That is the only way I could say so. I have no recollection of that meeting. The copy of the minutes was as follows:

"Boston, Mass., January 24, 1899. Meeting of the Boston Computing Scale Co. at the office of the treasurer, 50 Commercial Street, Boston, at 2:30 P. M. The meeting was called to order by the president.

"Present: William G. Bell and Charles R. Luce. In the absence

of the clerk, on motion of Mr. Bell, G. I. Lane was chosen clerk pro tem.

"By mutual consent of all parties interested voted that vote of April 12, 1898, by which a dividend of 300 per cent. was declared to stockholders of date, and for which note was given to William G. Bell for $1,500, and to Charles R. Luce for $1,500 be declared void and the treasurer now holding said note is hereby authorized to cancel same.

"By mutual consent of all interested voting that whereas there is a present prospect of disposing of the property at Saugatuck as also of the business of the Boston Computing Scale Co. to cancel the sale of property of every name and nature recently owned by the E. C. Smith Co. in two small patents, and the treasurer is hereby authorized to cancel the unpaid notes of Charles R. Luce and Alfred W. Bell for $500 each given for same."

The meeting then adjourned, and the said record was attested by G. I. Lane, clerk pro tem. and by William G. Bell, treasurer, and George R. Luce, treasurer.

I have no recollection of reconveyance executed by myself and Mr. Luce of its property to the company.

31 Redirect examination:

The witness' attention was drawn to the minutes of the meeting of the board of directors of the Boston Computing Scale Company and to the signature at the end, Alfred W. Bell, clerk, and stated that the same was his signature.

The complainant offered in evidence the minutes of the meeting of the board of directors of the Boston Computing Scale Company, 50 Commercial Street, April 12, 1898, under the stipulation aforesaid as follows:

"Boston, April 12, 1898.

"Meeting of the Board of Directors of Computing Scale Co. at the office of the treasurer, 50 Commercial Street.

"Present, William G. Bell, Charles R. Luce and A. W. Bell.

"Meeting was called to order by the president. The president stated that our surplus at this time was something more than $5,000 and including the capital was more than $6,000. In consideration of this statement the treasurer stated that he thought it no more than right that the stockholders of the company who had secured by purchase the entire plant and property, including patents of the E. C. Smith Co., by an outlay of something more than $3,000 of their personal funds should be reimbursed either by divided or direct payment. On motion it was voted to pay stockholders to date 300 per cent on the par value of the stock. On motion it was voted that the treasurer be and he hereby is authorized to issue the notes of the corporation, payable on demand, with interest at 6 per cent, in payment of said dividend, and the president be instructed to countersign said notes as president. On motion it was voted that when said notes are issued they shall be charged to dividend account."

And thereupon the meeting adjourned.

Which meeting is attested by the signature of Alfred W. Bell, clerk.

The witness stated:

If I ever did execute a note for $500, I never paid it to my knowledge. I have never made any claim to these patents of the E. C. Smith Company, or any part of them. As to the meeting of January 24, 1899, the two signatures at the bottom of the minutes of that meeting are the signature of Mr. Bell, and I should say of Mr. Luce, although I don't remember his signature very well.

32 The complainant next offered in evidence the report of the treasurer, William G. Bell, to the directors of the Boston Computing Scale Company, March 13, 1899, as follows:

"Boston, March 13, 1899, the treasurer reported to the directors of the Boston Computing Scale Co. that he had received from the sale of plant and patents from the Computing Scale Co. of Dayton, Ohio, $500 in cash, three notes of $4,000 each, payable in three, six and nine months, respectively, from January 30, 1899, with interest at 6 per cent, making a total of $12,500, the sale having been consummated by A. D. S. Bell of Dayton, Ohio, for which he had already been paid a commission of $1,532.70, less $250 advanced for expenses, the Boston Computing Scale Co. advancing all other expenses as per agreement. In payment for stock of merchandise the treasurer has received the note of the Computing Scale Co. for $2,827.50, with interest at 6 per cent, payable in three months, from March 1st, that he has sold the note maturing in three months from January 30th to the William G. Bell Co., in settlement for cash advanced or loaned to the company by the William G. Bell Co. and William G. Bell settled obligations with them amounting to between $4,200 and $4,300, as shown on page 87 of journal; that he has also sold the note on three months from March 1st with accrued interest to the William G. Bell Co., amounting to $2,831.18, from which I have paid the William G. Bell Co. $482.70; advanced to A. D. S. Bell on account of services rendered, a note of the Boston Computing Scale Co. as shown on page 91 of journal for $1,083.56, this leaving a balance due from the William G. Bell Co. of $1,266.80, for which they have given their note payable on demand for this amount, with interest at 6 per cent. This leaves in the treasury of the Computing Scale Co. one on six months from January 30, 1899, and the other on nine months from January 30, 1899. The treasurer would recommend that we declare a dividend of 800 per cent to stockholders of date, allowing Mr. Luce to accept in full payment either note at par value, William G. Bell accepting the other.

The treasurer is not aware that there are any outstanding bills or obligations against the corporations except the obligation to repair scales and our endorsement on the notes of the Computing Scale Co.; that he does not think it would be advisable to close up the affairs

of the company or reduce the capital stock until all obligations had lapsed, but would advise a vote being passed by which he may divide among stockholders of date any proceeds which may come
33 into his hands more than enough to satisfy the obligations of the charter amounting to $1,000."

Signed by William G. Bell, treasurer.

The witness said the signature to that report is that of William G. Bell, my father.

Complainant next offered in evidence the minutes of the meeting of the Board of Directors of the Boston Computing Scale Company, held at the office of the treasurer, 50 Commercial Street, March 13, 1899, as follows:

"Boston, March 13, 1899.

"Meeting of the board of directors of the Boston Computing Scale Co. at the office of the treasurer, William G. Bell, 50 Commercial Street.

"Meeting was called to order by president, and records of last meeting read and approved. The treasurer submitted the following report hereto attached and on motion it was accepted and placed on file.

"On motion it was voted to declare a dividend of 100 per cent in addition to the 800 per cent already declared to stockholders to date.

"On motion it was voted to adjourn."

The record was attested by the signature of Alfred W. Bell, clerk.

The complainant next offered in evidence the minutes of the meeting of the stockholders of the Boston Computing Scale Co., held at the office of the treasurer, 50 Commercial Street, Boston, November 22, 1899, as follows:

"Boston, November 22, 1899.

"Meeting of the stockholders of the Boston Computing Scale Co. at the office of the treasurer, 50 Commercial Street, Boston, Mass., November 22, 1899.

"The meeting was called to order by the president and the call the meeting read by the clerk. Present, Charles R. Luce, president; William G. Bell, treasurer; and Alfred W. Bell, director. Whole number of shares represented, 10.

"On motion it was voted to proceed to the election of a clerk for the ensuing year, and in pursuance thereof Stoughton Bell was unanimously elected and was then duly sworn.

"On motion of William G. Bell it was voted that the assets of the corporation consisting of merchandise, bills receivable and cash on hand, be turned over to William G. Bell as trustee for Charles R. Luce and William G. Bell and the said William G. Bell be
34 and hereby is authorized in the name of the corporation to collect the same and to divide the proceeds equitably be-

tween Charles R. Luce and William G. Bell, and on motion it was voted to proceed to the election of a board of directors for the ensuing year. The whole number of votes cast representing 10 shares resulted as follows: O. O. Ozias, Stoughton Bell and William G. Bell."

The meeting then adjourned and the minutes of the meeting are attested by the signature of Stoughton Bell.

WILLIAM G. BELL (recalled) stated:

That he thinks he furnished every dollar of the capital and that Mr. Luce received a one-half interest in everything in every respect. He drew no salary but he drew one-half of every dollar that was received; that he did not remember that these notes for $1,500 or for $500 were ever given to him. It was a long time ago. I know the business was all right and we owned everything from first to last, Mr. Luce and I together, both the E. C. Smith and the Boston Computing Scale Company.

The assignments offered in evidence were as follows, the first one marked Original Assignment B. Annie C. Courtenay, notary public, Chicago, September 11, 1911.

"Assignment.

Boston, Mass., April 7th, 1898.

Whereas, The E. C. Smith Co., a corporation duly created and existing under and by virtue of the laws of the State of Connecticut, having its factory in the town of Saugatuck, in said state, and its principal place of business in the City of Boston, in the state of Massachusetts, is now the sole owner of all the rights, titles and interests in and to a number of inventions for Spring Scales and other weighing scales, and in and to each and every of the letters patent issued or to be issued upon said inventions;

And, whereas, The Boston Computing Scale Co., a corporation duly created and existing under and by virtue of the laws of the state of Massachusetts, with its principal place of business in the city of Boston, in said state, is desirous of acquiring the entire rights, titles and interests in and to said inventions and in and to the letters patent issued or to be issued therefor;

35 Now, therefore, be it known that for and in consideration of the sum of One Dollar, and other good and valuable consideration, to it moving, the receipt of which is hereby acknowledged, the said The E. C. Smith Co. has sold, assigned and transferred, and by these presents do sell, assign and transfer unto the said The Boston Computing Scale Co. the entire rights, titles and interests in and to all the inventions embodied in the scales manufactured or sold by said The E. C. Smith Co., and in and to all the letters patent issued to or to be issued therefor, and in and to any and all divisions, reissues and extensions thereof; among the letters patent included in said transfer are the following: No. 445,616, September 3rd, 1895, to Albert U. Smith, for Automatic "Com-

puting" Scale; Re-issue No. 11,536, April 28th, 1896, to Albert U. Smith, for Automatic "Computing" Scale; No. 586,876, July 20th, 1897, to Edmond C. Smith and Albert U. Smith, for Automatic "Computing" Scale, and No. 597,300, to Albert U. Smith, assignor to The E. C. Smith Co., January 11th, 1898, for Price Scale.

The sole and exclusive right, title and interest in and to said letters patent and any and all inventions embodied in the scales made or sold by the said The E. C. Smith Co. and the letters patent to be issued therefor, to be used and enjoyed by the said The Boston Computing Scale Co. and its legal representatives for the full term for which said letters patent are or may be granted as fully and entirely as the same would have been used and enjoyed by the said The E. C. Smith Co. had this assignment and sale not been made.

THE E. C. SMITH COMPANY.

(Signed) CHAS. R. LUCE,
Pres't.

(Signed) WILLIAM G. BELL,
Treas.

STATE OF MASSACHUSETTS,
County of Suffolk, ss:

March 8th, 1899, personally appeared before me, the persons known to be Charles R. Luce and William G. Bell, who executed the above instrument in my presence and acknowledged the signing of the same to be their voluntary act and deed.

(Signed) C. F. BROWN,
Notary Public."

36 "*Assignment.*

Whereas, The Boston Computing Scale Co., a corporation duly created and existing under and by virtue of the laws of the State of Massachusetts, and having its principal place of business in the City of Boston, in said state, is now the sole owner of all the rights, titles and interests in and to a number of inventions for Spring Scales and other weighing scales, and in and to each and every of the letters patent issued or to be issued upon said inventions;

And, whereas The Computing Scale Co., a corporation duly created and existing under and by virtue of the laws of the State of Ohio, with its principal place of business in the city of Dayton, in said state, is desirous of acquiring the entire rights, titles and interests in and to said inventions, and in and to the letters patent issued or to be issued therefor;

Now, therefore, be it known that for and in consideration of the sum of One Dollar and other good and valuable consideration, to it moving, the receipt of which is hereby acknowledged, the said The Boston Computing Scale Co. has sold, assigned and transferred and by these presents do sell, assign and transfer unto the said The Computing Scale Co., the entire rights, titles and interests in and to all the inventions embodied in the scales manufactured or sold by the said The Boston Computing Scale Co. and in and to all the

letters patent issued or to be issued therefor, and in and to any and all divisions, re-issues and extensions thereof; among the letters patent included in said transfer are the following: #445,616, September 3rd, 1895, to Albert U. Smith, for Automatic "Computing" Scale; re-issue #11,536, April 28th, 1896 to Albert U. Smith, for Automatic "Computing" Scale; #586,876, July 20th, 1897, to Edmond C. Smith and Albert U. Smith, for Automatic "Computing" Scale; and #597,300, to Albert U. Smith, assignor to The E. C. Smith Co., January 11th 1898, for Price Scale.

The sole and exclusive right, title and interest in and to said letters patent and any and all inventions embodied in the scales made or sold by the said The Boston Computing Scale Co., and the letters patent to be issued therefor, to be used and enjoyed by the said The Computing Scale Co., and its legal representatives for the full term for which said letters patent are or may be granted as fully and entirely as the same would have been used and
37 enjoyed by the said The Boston Computing Scale Co. had this assignment and sale not been made.

THE BOSTON COMPUTING SCALE CO.

(Signed) CHAS. R. LUCE,
Pres't.

(Signed) WILLIAM G. BELL,
Treas.

STATE OF MASSACHUSETTS,
County of Suffolk, ss:

March 8, 1899, personally appeared before me, the persons known known to me to be Charles R. Luce and William G. Bell, who executed the above instrument in my presence and acknowledged the signing of the same to be their voluntary act and deed.

(Signed) C. F. BROWN,
N'y Pub."

Thereupon, on the 9th day of December, 1913, notice was given to the defendant's solicitors that the proofs taken under the order were closed, and thereupon the defendant, having taken no proofs, the said cause was brought on for hearing before the said District Court and the said depositions were offered in evidence with the record theretofore made in said court. And thereupon the court rendered its decree as follows:

Decree of Dec. 9, 1913.

Decree.

This cause, pursuant to the mandate of the Circuit Court of Appeals herein remaining this cause to the District Court with direction to dismiss the bill as to Patent number 597,300 and to permit complainant to introduce proof of title to the Patent Reissue number 11,536, and pursuant to the order of this Court heretofore entered herein allowing time for introduction of proofs regarding said

complainants' title to said reissued Patent, having come on to be heard upon said mandate and the proofs, and the Court having heard the proofs and the argument of counsel for the respective parties, and being now fully advised.

It Is Ordered Adjudged and Decreed:

38

I.

That reissued Letters Patent No. 11,536 granted April 28, 1896 to Albert U. Smith and Edmond C. Smith as assignee of an undivided one-half interest thereof, upon the application of Albert U. Smith and as assignor of an undivided one-half interest thereof to Edmond C. Smith, is good and valid in law.

II.

That the complainant, The Computing Scale Company is now, and has been ever since the eighth day of March, 1899, the sole and exclusive owner of the said reissued Letters Patent No. 11,536, and of the invention described and claimed therein, and of all rights and privileges of whatsoever nature thereunder and thereto.

III.

That the defendant, Toledo Computing Scale Company, has a regular and established place of business in this District at Chicago, Illinois, and has there and elsewhere infringed said reissued Letters Patent and particularly claims five and six of said reissued Letters Patent No. 11,536.

IV.

That the said complainant do recover of the said defendant the profits, gains and advantages which the defendant has derived, received or made, or shall have derived, received or made by reason of its said infringement of said reissued Letters Patent No. 11,536, and that the said complainant do recover of the defendant any and all damages which the complainant has sustained by reason of said infringement of said reissued Letters Patent by said defendant.

V.

That this cause be and is hereby referred to Charles B. Morrison, a Master of this Court, to take and state an account of said profits, gains and advantages, and to assess such damages and to report thereon with all convenient speed; and that the defendant and its attorneys, officers, agents, clerks, servants, and workmen be and they are hereby directed and required to attend before said Master,

39 from time to time, as he shall direct, and produce before him all such books, papers, vouchers and documents, and submit to such oral examination as he may direct and require.

VI.

That as to Letters Patent No. 597300, the said complainant take nothing by its said bill, but as to said Letters Patent No. 597300, said bill be dismissed.

VII.

That the complainant do recover of the defendant its costs and disbursements in this suit as to said reissued Letters Patent No. 11536 to be taxed and have execution against the defendant therefor, and that the defendant do recover of the complainant its costs and disbursements in this suit as to said Letter Patent No. 597300 to be taxed and have execution against the complainant therefor.

KENESAW M. LANDIS,
Judge.

And on to-wit: the 22nd day of April, 1914, there was filed in the Clerk's office of said Court a certain Motion of Course, in words and figures following, to-wit:

Filed Apr. 22, 1914.

United States District Court, Northern District of Illinois.

Cause No. 30,024. (Date:) Apr. 22, 1914.
Title of Cause: The Computing Scale Co. vs. Toledo Computing Scale Co.
Brief Statement of Motion. Mo to set rehearing for a day certain.
Name of moving Counsel: Zane, Morse & McKinney, Representing Complainant.
Name of opposing Counsel (if any): Rector, Hibben, Davis & Macauley, A. H. Meads.
Cause set for rehearing May 4th.

K. M. L.

(Endorsed:) Filed Apr. 22-1914, T. C. MacMillan, Clerk. Hand this memorandum to the Clerk. Counsel will not rise to address the Court until motion has been called.

40 And, to-wit: the 22nd day of April, 1914, being one of the days of the regular April term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Kenesaw M. Landis, District Judge, appears the following entry, to-wit:

Order of Apr. 22, 1914.

30024. Chy.

THE COMPUTING SCALE COMPANY

vs.

TOLEDO COMPUTING SCALE COMPANY.

On motion of the plaintiff and upon notice filed, it is ordered by the Court that this cause be set down for hearing on May 4th.

And afterwards, to-wit: on the 6th day of May, 1914, being one of the days of the regular May term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Kenesaw M. Landis District Judge, appears the following entry, to-wit:

Decree of May 6, 1914.

United States District Court, Northern District of Illinois, Eastern Division.

Wednesday, May 6, 1914.

Present: Honorable Kenesaw M. Landis, District Judge.

In Equity.

No. 30024.

THE COMPUTING SCALE COMPANY

vs.

TOLEDO COMPUTING SCALE COMPANY.

This cause, pursuant to the mandate of the Circuit Court of Appeals herein remanding this cause to the District Court with direction to dismiss the bill as to Patent number 597,300 and to permit complainant to introduce proof of title to the Patent Reissue number 11,536, and pursuant to the order of this Court heretofore entered herein allowing time for introduction of proofs regarding said complainants' title to said reissued Patent, having come on to be heard upon said mandate and the proofs, and the Court having
41 heard the proofs and the argument of counsel for the respective parties, and being now fully advised,

It Is Ordered, Adjudged and Decreed:

I.

That reissued Letters Patent No. 11,536, granted April 28, 1896, to Albert U. Smith and Edmond C. Smith as assignee of an un-

divided one-half interest thereof, upon the application of Albert U. Smith and as assignor of an undivided one-half interest thereof to Edmond C. Smith, is good and valid in law.

II.

That the complainant, The Computing Scale Company is now, and has been ever since the eighth day of March, 1899, the sole and exclusive owner of the said *said* reissued Letters Patent No. 11,536, and of the invention described and claimed therein, and of all rights and privileges of whatsoever nature thereunder and thereto.

III.

That the defendant, Toledo Computing Scale Company, has a regular and established place of business in this District at Chicago, Illinois, and has there and elsewhere infringed said reissued Letters Patent and particularly claims five and six of said reissued Letters Patent No. 11,536.

IV.

That the said complainant do recover of the said defendant the profits, gains and advantages which the defendant has derived, received or made, or shall have derived, received or made by reason of its said infringement of said reissued Letters Patent No. 11,536, and that the said complainant do recover of the defendant any and all damages which the complainant has sustained by reason of said infringement of said reissued Letters Patent by said defendant.

V.

That this cause be and is hereby referred to Charles B. Morrison, a Master of this Court, to take and state an account of said profits, gains and advantages, and to assess such damages and to re-
42 port thereon with all convenient speed; and that the defendant and its attorneys, officers, agents, clerks, servants, and workmen be and they are hereby directed and required to attend before said Master, from time to time, as he shall direct, and produce before him all such books, papers, vouchers, and documents, and submit to such oral examinaiton as he may direct and require.

VI.

That as to Letters Patent No. 597,300, the said complainant take nothing by its said bill, but as to said Letters Patent No. 597,300 said bill be dismissed.

VII.

That the complainant do recover of the defendant its costs and disbursements in this suit as to said reissued Letters Patent No.

11,536, to be taxed and have execution against the defendant therefor, and that the defendant do recover of the complainant its costs and disbursements in this suit, as to said Letters Patent No. 597,300 to be taxed and have execution against the complainant therefor.

KENESAW M. LANDIS,
Judge.

Dated, May 6th, 1914.

Proceedings Had and Evidence Taken in the Above-entitled Cause Before the Honorable Charles B. Morrison, Master in Chancery of said Court, at His Office, in the Federal Building, Chicago, Illinois, and at Toledo, Ohio, Pursuant to the Authority and Direction Contained in the Decretal Order Made in This Cause and Due Notice Given.

May 26, 1914.

Plaintiff entered a motion for a rule on the defendant to furnish and bring in before the Master its account as directed by the decree within a time to be fixed by the Master.

By agreement the hearing on this motion was adjourned until Monday, June 1st, 1914, at 10 A. M.

Whereupon an adjournment was taken to Monday, June 1, 1914, at 10 o'clock A. M.

Monday, June 1, 1914—10 o'clock a. m.

Continued to 2 o'clock P. M.

43 Monday, June 1, 1914—2 o'clock p. m.

Mr. Meads: The defendant by its solicitors moves that the Master enter an order limiting the accounting to profits, gains or damages to which the complainant might be entitled by reason of any acts of infringement of the patent in question, being claims 5 and 6 of reissued Letters Patent No. 11,536, committed within this district.

The Master: The order of references does not limit the Master to any particular district but directs that an accounting be taken for the period in question, and if counsel wish this accounting limited to this district, he should present that matter to the court and obtain directions to the Master in that regard. However, the defendant in stating the account under Rule 63 may, if it sees fit, so segregate the account that the court may finally pass upon that question and have the account so segregated before him for his action. The motion will therefore be denied.

It is understood that in all cases where the Master makes a ruling that the party against whom the ruling is made shall be considered to have taken an exception at the time.

Counsel for complainant moved that an order be entered upon the defendant that it prepare and furnish an account in conformity to Federal Equity Rule 63 and presented therewith a draft form of such order, to certain portions of which draft form of order counsel

for the defendant objected. The matter was discussed by counsel and considered by the Master and the Master entered an order in the words and figures following, to-wit:

It is ordered that in accordance with Federal Equity Rule Number 63, the defendant, on or before the 15th day of September, 1914, bring in before the Master in this cause its account, showing in the form of debtor and creditor the following:

I.

The account by annual periods beginning six years before the filing of the bill of complaint in this cause, and ending with the expiration of Reissued Letters Patent Number 11,536, granted April 28, 1896, setting forth therein for said annual periods.

(*a*) The scales embodying the indicator drum described
44 in Claim Five or Claim Six of said Reissued Letters Patent, made or sold by the defendant.

(*b*) The selling price of all such scales embodying the infringing device in all cases where the scales embodying such device were sold for a lump sum as shown by the books of the defendant.

(*c*) Whatever is claimed as a credit, setting forth separately (1) the manufacturing cost of the infringing devices separately itemizing the cost of materials and the cost of labor therein, and whatever else is included by said defendant in said manufacturing cost; (2) the selling cost of such devices, separately itemizing the cost of freight and transportation and delivery and cost of marketing such devices, showing how such cost of marketing such devices is obtained.

(*d*) Whatever is claimed as the overhead expense, itemizing and classifying the said overhead expense, and showing whether any amount thereof claimed as a part of the overhead expense is any part of either the manufacturing cost or the selling cost, and what part of the overhead expense of the whole business of defendant is taken, if any, as a credit upon the cost, and showing how such part of the said overhead expense is apportioned to the particular devices.

And such account shall show the said items for yearly periods, extending the balance of such annual accounts, and finally casting up the grand total of such annual balances, which account shall show, by items and totals, the whole of the gains, profits and advantages derived by defendant from said devices made or sold, for the period above mentioned, namely, the period from six years preceding the filing of the bill of complaint in this action to the expiration of the said Reissued Letters Patent.

II.

The amount of the infringing devices on hand at the end of the infringing period and the profits, if any, accruing to the defendant on account thereof, stating how defendant arrives at such profits.

III.

Convenient reference should be made by the accounting parties to the books, records and information upon which the account is based, so that the opposite party may readily verify or disapprove the
45 account as rendered without the necessity of an examination or search of all the books and records of the accounting party during the period.

Whereupon an adjournment was taken to Tuesday September 15, 1914 at 10 A. M.

Tuesday, September 15, 1914—10 o'clock a. m.

Counsel appeared before the Master, and upon motion of counsel for defendant time extended for completion of account sixty days.

Whereupon an adjournment was taken to Monday, Nov. 16, 1914, at 10 o'clock A. M.

Monday, November 16, 1914—10 o'clock a. m.

On this day the parties did not appear before the Master, but by agreement among themselves postponed the hearing until Saturday, November 21st, 1914.

Saturday, November 21, 1914—10 o'clock a. m.

Counsel appeared before the Master, and by agreement time extended for filing account to Friday, Jan. 15, 1915.

Whereupon an adjournment was taken to Friday, January 15, 1915, at 10 o'clock A. M.

Friday, January 15, 1915.

Account filed with Master by counsel for defendant, and counsel for plaintiff furnished copy of same for examination. No time was fixed for next hearing, and the matter held open to be taken up on notice.

On January 23, 1915, counsel for plaintiff served notice on counsel for the defendant to appear before the Master on Monday, January 25, 1915, at 10 o'clock, and to answer to a motion set out in the notice that the Master rule that the account of the defendant theretofore filed on January 15, 1915, is not in compliance with the order before then entered by the Master in that regard, and that the Master direct them to comply with such order.

On January 25, 1915, plaintiff filed its notice of motion with the Master and notified the Master that defendant's counsel was
46 not prepared to take up the motion on that day, and that the hearing might be adjourned at the request of counsel for the defendant until 9:30 o'clock in the forenoon of Tuesday, January 26, 1915.

Tuesday, January 26, 1915—9:30 o'clock a. m.

Counsel for plaintiff objected to the account filed. After discussion counsel for defendant agreed to produce William A. Zolg, the person who prepared the account, before the Master, on Tuesday, the second day of February, 1915, at 10 o'clock A. M.

Whereupon an adjournment was taken to Tuesday, February 2nd, 1915, at 10 A. M.

Evidence Condensed and Stated in Narrative Form.

Friday, February 5th, 1915.

Met Chicago, Illinois.

WILLIAM A. ZOLG, called on behalf of plaintiff, testified as follows:

Direct examination.

By Mr. Zane:

"I am the William A. Zolg who prepared the account filed in this case, and my name is attached to the affidavit thereof. I am an accountant, and have been connected with the defendant company since 1909, first as accountant in the Auditing Department, then cashier, and since February 1912, as assistant treasurer of the defendant company. While cashier and assistant treasurer I had charge of the bookkeepers and general charge and custody of the books of account of the Toledo Company. While I first came with the company in 1909, I know that the Toledo Company has books of account for the years 1905–6–7 and 8, and that these books show the salesmen's accounts and the customers' accounts, and such books are in my custody at the present time.

"I made up the account filed on behalf of the Toledo Company and it is divided into two periods, the 1911 period and the 1912 period.

47 "In the course of my duties as accountant, cashier, and assistant treasurer, I had a general knowledge of the types of scales being made by the Toledo Company, and of the style of numbers thereof and what particular types were cylinder-shaped computing scales, and I can tell from memory the different styles of Toledo Computing Scale Company's scales that had a revolving cylinder, as to most of them. Some of these styles, referring to cylinder scales, are as follows: 300—that was the first cylinder type made—81, 350, 380, 381, 382, 383, 385, 386, 387, 395, 397, 581, 582, 583, 81, 181, 182, 183, 184, 185, 186, 586, 587. I know these scales by their numbers.

When I was told to make up this account by our treasurer, Mr. Kiser, he directed me verbally, to make an account covering all the drum scales made and sold. He did not tell me specifically what time the account was to cover. I got the time by consulting counsel. I had never made up a report similar to this, and I went to our counsel

for instruction. I was told by Mr. Kiser to make up an account of all drum-shaped scales.

I asked Mr. Meads and Mr. Hibben as to how the account was to be made up.

Then follows testimony:

Q. Well, now, you have begun your account with the period of 1911. Who told you to begin there?
A. That was done under instructions of counsel.
Q. Well, what counsel?
A. Mr. Meads and Mr. Hibben.
Q. Did they tell you to begin with the first of January, 1911?
A. No, sir, they told use to begin with the scales that used the light chart.
Q. Light chart?
A. Yes, sir.
Q. Did they say anything to you about returning an account of the drum shaped scales sold in 1910?
A. No, sir.
Q. They told you to give that, did they?
A. They didn't say give it; they said, "Start with the scales that used the light chart."
Q. What do you mean by a light chart?
A. Scales using the aluminum spiders, as I understand it.
48 Q. What is that?
A. The scales with the aluminum spiders in the drum.
Q. Yes; that is, when you first began to use aluminum spiders?
A. Yes, sir.

"By aluminum spiders I mean the end pieces assembled inside the paper chart and fixed on the center shaft; they are the braces on which the paper charts are mounted. We began using the light spiders in March, 1911, so that I put in nothing in the account before March, 1911, though books showing the sale of drum shaped scales prior to March, 1911, were in the Toledo Company's Office."

Then follows testimony:

Q. What had been used for those so-called spiders prior to March, 1911?
A. I assume that steel was used prior to that.
Q. You assume it; do you know?
A. All that I have seen are steel; I don't know.
Q. Who told you when the aluminum spiders began to be used?
A. I got that information from our purchasing department, Mr. Flaherty.
Q. What day in March did you fix upon for those aluminum spiders, when they first began to be made?
A. On March 8th.
Q. So that your account is simply after the 8th day of March, 1911?
A. Yes, sir.

Q. Now, those drum shaped scales were sold long before that, were they not?

Mr. Meads: I object as immaterial. The patent here is not a scale; it is on a light drum.

The Master: Objection overruled.

(Mr. Hibben: I suppose the execution is automatic.)

The Master: It may be understood that an exception is taken each time by the party against whom the ruling is made.

Mr. Zane (continuing): I mean by that, these drum shaped scales were sold by the Toledo Company long prior to March 8, 1911?

A. That is, drum shaped scales?

Q. Yes.

A. Just simply sold as scales?

Q. Yes.

49 A. Yes, they were sold prior to that.

Q. Your No. 81, does your memory tell you how far back you began to sell that scale?

A. No sir.

Q. Well, it was at least as early as 1906, was it not?

A. I don't know.

Q. Does your memory go back to the time you began to sell No. 82?

A. No sir.

Q. Or 181?

A. No sir.

Q. Or any of those drum shaped scales?

A. No sir.

Q. Now, did you first go with the Toledo Company in 1909?

A. Yes sir.

Q. At that time, at any rate, they were making drum shaped scales and selling them, were they not?

Mr. Meads: I object again, on the ground that the patent in controversy does not cover a drum shaped scale. It is not on a scale at all, but upon a light drum. It is immaterial whether we are selling drum shaped scales or not, unless they involve the device in question.

The Master: Objection overruled.

(Question read.)

A. That was in 1909.

Q. Yes?

A. Yes sir.

Q. Had you ever worked for the Toledo Computing Scale Company prior to 1909?

A. No sir.

Q. Now, were there any types of what you called drum shaped scales, you know what I mean, the clyinder——

A. Yes sir; the cylinder scales.

Q. Cylinder scales made by the Toledo Company by numbers, which numbers run in this Account, for the year 1911?

A. I do not understand that question.

Q. Perhaps my question is a little involved. What I want to know, you have put down here in the Account certain numbers for scales—81, 82, 181, 182, 183, 4, 5, 6, and so on——

A. Yes sir.

Q. Now, what I want to know is if you made a distinction
50 in drum shaped scales after March 8th, 1911, as to some of which drum shaped scales you claimed the aluminum spiders were in, and as to other drum shaped scales you claimed the steel frame work or spiders, were in.

A. For those periods it included all the scales.

Q. All the drum shaped scales after March 8th, 1911, were made with aluminum frame work or spiders?

A. Yes sir."

"I do not know that there is any difference in the shape of steel and aluminum spiders, and at least the shape of the cylinder is the same.

"Referring to the Account Furnished by Defendant, the first item, found on Page 1 of the Account, refers to one scale, style No. 81, selling at $75. The data for this item was taken from a Customer's Account, which Customers' Accounts are bound in a ledge formed of loose-leaf records of each account. I have not with me the Customer's Account showing this particular entry, but I have a sample copy of a similar entry upon that book, referring to the sale of a style No. 345, blue finish, with a factory number, 91133, with a description of the chart in the scale, and then the total amount of the sales, $150. Below that is shown either the notes that were taken in payment or the payments made upon the account. When notes were taken, the due dates thereof were entered on the Customer's Account."

(This sample entry was marked for identification, Complainant's Exhibit No. 1.)

"There is in our books a customers' Account sheet, for the No. 81 scale mentioned in the first item of our Account, similar to the sample account submitted. If, on the sale of a scale, we take an old scale in exchange, the net amount of money received on said scale would be entered in this Account. On the Customer's Account sheet would be shown the gross selling price of the scale, then the allowance made, and below that the net amount of cash involved in the sale. I simply took the net amounts of sales for entry in the Account Furnished by Defendant, disregarding everything but the net amount of cash received. If the thing taken in were afterwards sold for money, that didn't figure in this account. I cannot tell
from the first item there what was the amount of the allow-
51 ance or the gross selling price for the No. 81 scale. I have no memoranda with me that would show the list price.

The next item on Page 1 of the account shows two scales, style No. 81, selling for $90 apiece, the next item shows one No. 81 style, selling for $125, and the next item, one No. 81 scale, selling at $125. I take it that the catalogue price of this scale must have been at

least $125. Below that is an item, one No. 81 scale, selling at $135, so our catalogue price for that scale is at least $135. I don't know our regular catalogue price. I know we got $135 for it. I do not know just how the No. 82 scale differed from the No. 81. The next item is sale of one scale, style No. 181, selling at $90. I do not know what the catalogue price of the No. 181 scale was, and I do not know what the differences were between scales Nos. 181, 182 and 183, but they were the same kind of cylinder scales with minor differences.

Referring to the sheets of Customer Accounts, the sales entering into these items will, in each case, show the factory number of the scale involved, as well as the style numbers, though I do not know anything about the books in which factory numbers are kept.

The next item refers to a sale of one No. 183 for $140. Since no entry is made in this account of any sale of No. 184 or No. 185 scale, I take it that none of this type were sold during 1911, for if any scales of these types were sold they would appear in this account. I mean the account to show no sales of No. 184 scales in 1911.

Upon receipt of the order from the salesmen, the original order is entered on the daily order record in the Order Department, but it has nothing to do with the records. We do not enter any of the details of the order, just the fact of the order and the customer's name, the saleman's name, and the style of the scale by number. We do not there enter the scale selectd to fill the order with its factory number. After the order has been entered in the Order Department and has been accepted by the Company it is billed on this kind of a sheet, which sheet is transferred to the Accounting Department to be entered, the entries that take place after that being taken from this. These sheets are kept in loose leaf form, and the entries are made on the journal kept in the Accounting Department, a book of loose leaves bound together—our system is a loose leaf system—only the totals of the customers' accounts are kept in the journal,
52 and the bound ledger, each customer's account being kept on a loose leaf, such as is here shown. (Plaintiff's Exhibit No. 1.)

Then follows testimony:

Q. Now, the next item I wish to draw your attention to upon that account before us is the style No. 345, 27 scales, selling price $28.60; can you look down the line there and see what you sold that 345 scale for? That is, your catalogue price, or your general selling price?

A. The highest net price here is $150.

Q. So that your scales as a matter of fact differ in selling price, say $15, don't they, as between one finish and another? Your blue finish was $15 less than the gold, was it not? Was not that the rule? or do you recollect?

A. I don't know what the difference was.

Q. So was that 27 scales put in that item a single transaction?

A. I don't know.

Q. Let me see if I can refresh your recollection. Do you recognize this Toledo scale with the slogan "No Springs—Honest Weight"?

A. Yes, I have seen it before.

Q. That is one of your catalogs, is it not?
A. Yes, sir.
Q. Have you any idea when that was issued?
A. No, sir.
Q. You are able to tell from looking at it, that it was at least prior to 1910, was it not? You can tell that much, can't you?
A. I don't know; I don't know when it was issued.
Q. Well, I draw your attention to the No. 345 scale in this catalog; that is a drum shaped scale, is it not?
A. Yes, sir.
Q. And you see, finished in blue its price is given as $140?
A. Yes, sir.
Q. And its gold finish is not given in this catalog, but equipped with an electric attachment, that would be a little electric light——
A. Electric illumination.
Q. An electric light to illuminate the paper?
A. Yes.

53 Q. Its price was $165, so you would say then, as to this No. 345 scale, this price of $140 was the usual selling price, unless it was of a higher finish than the blue, would you not?

A. Well, I don't know what was the usual selling price of all the scales. There are scales in here sold at $140.
Q. All right. Now, you look at that number, 27 scales sold at $28.60 apiece. You know that you get something in exchange there, don't you?
A. I know that there was an allowance made.
Q. An allowance for something?
A. Yes, sir.
Q. Well, the Toledo Computing Scale Company had to get something for that allowance, didn't it?
A. Well, there was an allowance made. I don't know what they got for it.
Q. You don't know what it is?
A. No, sir.
Q. But your sheet will show it, won't it?
A. No; the sheet will simply show the net.
Q. The billing sheet?
A. Oh, the billing sheet?
Q. Yes.
A. The billing sheet, yes.
Q. Who told you to leave off those details, anybody?
A. Well, under the usual method of wanting to know how to make up the report, it was taken up with counsel.
Q. Oh, you asked counsel about it?
A. Yes.

"I do not know whether the 27 scales sold at $28.60 were included in a single order, nor do I know whether the 12 scales listed below as sold at $100, or the 31 scales sold at $115 were all in one order, because these figures are recapitulations. If there were 27 separate transactions where No. 345's were sold at that price, they would be grouped together here. The Nos. 346-7-9 are practically the same style of scale as the No. 345, they belong to the same series. The

No. 381 was a cylinder scale without an electric attachment and the No. 383 was the electric scale of that series. I see that in the catalog presented, the price of the No. 381 scale is given as $160 in blue, and $170 in gold. The No. 382 is the same general style of scale and the No. 385 is the electrically illuminated scale of the same style. No. 384 was about the same style as the No. 383 and No. 385 is a smaller cylinder scale. This scale is listed in the catalog
54 sheet in counsel's hand at $140. The No. 387 was this smaller size cylinder scale, electrically illuminated, and the price given in the catalog for the No. 387 was $165. I do not know of any cylinder scale in the 400 numbers, but in the 500 numbers we had the No. 581, 583, 585, 587. We did not sell any 582 or 584. I don't know that we had any style 582 or 584.

"Allowances for exchanges or reductions were not entered in this account. We allowed 5% discount for cash within 30 days and had no other discount to accelerate payments. My answer to questions referring to accelerate in the 1912 period, beginning on Page 10, would be the same as those given with reference to the 1911 period where the same question is involved.

Referring to Labor and Material shown on Page 21 of the account filed by the witness for the defendant, the following testimony was given:

Q. Now, then, we will turn to your sheet No. 21 which shows Labor and Material for the scales that are given as sold of this type for the year 1911.

A. Yes, sir.

Q. Where and from what book did you get that item $32.04 for labor?

A. I didn't get it from any book. It was reported to me by the Factory Auditing Department.

Q. At the end of a year, or when?

A. No. They simply reported the cost for the labor and material.

Q. For the purpose of being put into this, into this report?

A. No, sir.

Q. It was a report which you had before that?

A. It was a report which they had.

Q. Which they had before that time?

A. Yes, sir.

Q. Made up from one of their cost sheets?

A. Made up from their cost sheets.

Q. As to the correctness, the truth of that figure, you know nothing?

A. No, sir.

Q. They are simply contained in the cost sheet?

A. Yes, sir.

55 Q. Do you know how they arrived at that, it must have been on a system of averaging, was it not, in some way?

A. The cost?

Q. Yes.

A. The cost that was reported to me was taken from their time tickets and requisitions.

Q. Yes, and averaged between a lot of scales that were turned out in that particular time?

A. Yes.

Q. And material in the same way?

A. Yes, sir.

"Referring now to page 22—Factory Overhead Expense—the first item refers to Indirect Labor, a separate account for which is carried on the ledger—that covers labor that cannot be charged directly to scales, such as clerical labor and departmental labor in the factory departments.

"The next item, Factory Supplies, refers to an account covering waste, oils, gasoline, fuels, drills and similar items that cannot be charged up directly as material.

With reference to the next item, Experimental, the following testimony was given:

Q. Now, the next item, "Experimental" I presume you don't have an experimental item; you mean something that has to do——

A. Cover experimental work.

Q. Well, experimental work in what?

A. In connection with the scales.

Q. Do you know as to that experimental work, as to what particular kind of scales it is put on?

A. No, sir.

Q. You don't know that at all?

A. No sir.

Q. You never investigated that item to find out what those experiments were that are charged for there?

A. No sir.

Q. It might have been an experiment with regard to some totally different kind of a scale, so far as you know?

A. I do not know what is covered. All I know is that it is reported as experimental work.

Q. Well, is that a separate account on your books?

A. Yes sir.

Q. That's one of your factory accounts is it not, that's not an expense?

56 A. Oh, it is an expense.

Q. You charge that as an expense?

A. Yes sir, that is an expense item.

Q. It is not work that is done that enhances your capital?

A. No sir.

Q. Where do you get the items that go on your books to make up that experimental account, where do they come from?

A. From the pay roll and through the purchase requisitions, withdrawals from stock, and so forth.

Q. Now, will that account entitled "Experimental" on your books show the different items and what it is contracted for or what the sums expended were for?

A. The book itself would not show that.
Q. What will show that?
A. The vouchers. The journal vouchers.
Q. Are those vouchers preserved?
A. Yes sir.

"The next item is "Tools and Patterns." To this account is charged the cost of tools and patterns, and at inventory periods this account is credited with the tools and patterns inventoried, the net total remaining being the expense on this item, and such figure is used in this account.

"The next item, "Packing and Shipping" is an expense account on our books, as is the next item, "Lumber," and the next item, "Trucking." The next item "Maintenance, Repairs and Alterations," covers repairs and maintenance of factory buildings, such as removing partitions, and similar expenses charged in any one year.

"The next item, "Power, Heat and Light" covers disbursements for these commodities.

"The next item, "Superintendent and Factory Offices" covers the expense of maintaining the factory offices, and includes salaries of office help.

"The next item "Miscellaneous Factory Expense" covers any expense that cannot be included under the other heads enumerated, such as repairs to machinery.

"The next item "Refinishing Expense" covers the refinishing of scales—our own scales that have become marred and scales taken in exchange.

"The total of these Factory Overhead Expenses for the whole year 1911 equals $111,827.16.

57 "The next page of the Account, Page 23, referring to Commercial and Selling Expenses, covers the whole year 1911. The first item, "District Managers' Salaries and Expenses' covers the salaries and expenses of our district managers—those men in charge of our various territories. They are not stationed at Toledo.

"The next item, 'Branch Offices,' covers the expenses of the offices out in the territories.

"The next item, 'Miscellaneous Selling' covers advertising, publications gotten out by the Company, circulars and things of that kind.

"The next item is 'Cash and Quantity Discounts.' 5% is the cash discount for cash in 30 days, and the quantity discount is an allowance made from the list price when a quantity sale of scales is made.

"The next item is 'Collection and Exchange,' and the next 'Fidelity Bonds'—that is for bonding our employees.

"The next 'Freight on Scales' covers any items where we pay the freight, whether freight on scales leaving the factory, or freight on exchange scales coming into the factory. It is freight on scales in and out of the factory, and I have charged as expense the work of bringing second-hand scales, taken in exchange, and have made no credit for any value for those scales in the selling price."

"The next item 'Interest' covers interest on borrowed money, and bond interest if there was any during the year.

"The next item is 'Dining Room'—that is the dining room maintained at the factory for the benefit of officers and employees.

With reference to the next two items 'Legal Expense and Litigation' the following testimony was given:

Q. Now, the next item 'Legal Expense' whatever your books show expended in litigation you entered it under the head of "Legal Expense" did you?
A. No, sir.
Q. Where did you enter it?
A. Under "Litigation."
Q. What did you enter then under "Legal Expense"?
A. Expense in connection with collections of accounts.
Q. And nothing else; any other kind of legal expense?
A. I don't know whether there is anything else in there or not.
58 Q. Well, whatever was spent on lawsuits is entered either in "Legal Expense" or "Litigation" is it not?
A. Whatever is spent on lawsuits in connection with Customers' Accounts should be legal expense.
Q. Yes, but suppose the Company was engaged in litigation with some other company; for instance, what your Company paid out in this very case during the year 1911, where would that be entered?
A. It should be entered under "Litigation."
Q. Under that item of "Litigation"?
A. Yes, sir.
Q. Well, as you pay any item, it is entered there, is it not?
A. Yes sir.
Q. Do you know what the items are that go to make up "Legal Expense?"
A. All the items entering into collection of Customers' Accounts, the following up of Customers' Accounts.
Q. And nothing else; you feel sure of that, do you?
A. I do not. I do not know whether there is anything else in there or not.
Q. Yes. Now, what does that $1,598.81 under the head of "Litigation" mean? What litigation?
A. I don't know.
Q. Well, if anything was paid out in this very lawsuit, it would be in there, would it not?
A. If it was during the 1911 period.

The testimony relative to "Patent Expenses" is as follows:

Q. The next item I want to draw your attention to "Patent Expenses" $14,890.57; what is that?
A. It covers expenses, disbursements, purchases, and so forth, in connection with the account, "Patent Expenses."
Q. Does it mean purchase of patents?
A. It might.
Q. Well, does it? Do you know anything about it?

A. If there is anything to be charged to "Patent Expenses" in the way of a purchase, it would be in that account.

Q. But do you know whether there is in that account any such thing as a purchase of a patent?

A. I do not.

59 Q. You know, don't you, that a patent purchased would go into your Capital Account; that is capital, is it not?

A. Well, I don't know; patents purchased—I mean purchases in connection with patents—not a patent itself, but disbursements that are made in connection with the patent expense account.

Q. Yes. Fees in the Patent Office; such things as that?

A. Expense, yes sir.

Q. And if you had a lawsuit involving the patents, it would cover that, would it not?

A. Cover any expenses that I would consider patent expenses.

Q. Answer the last question, please.

(Question read.)

A. Well, I don't exactly understand your question. Lawsuits in connection with patents, because there are two accounts there. One is Litigation and one is Patent Expense; I would not confuse the two.

Q. Well, a lawsuit over a patent?

A. That would be Litigation

Q. Would be either in Ligation or Legal Expense?

A. It wouldn't be either, it would be Litigation if there were an expense in connection with a lawsuit.

Q. Now, whatever moneys were paid out in litigation are in that litigation account then, are they?

A. They should be, yes, sir.

"We have bound volume ledger accounts showing these items entered as totals for the year 1911 and we also have the vouchers covering the individual items entering into these accounts.

"The next page of the Account Furnished by Defendant, page 24, covers the items of labor and Material—that is the labor and material on the particular scales enumerated. I took the labor and material for the whole period and divided it into the overhead for the same period and got 84%. On the next page of the Account, page 25 of the first item is Commissions. We have an account—Commissions—on our books, and it consists of monthly totals, and it is for the whole year 1911. Commissions cover the commission the men get on all those sales. All of the commissions they get on the sale, when it is finally paid, it is all cash. The commission is paid only on the net amount involved in a sale. For example, if a scale,

60 listed at $100, was sold for $75 cash, and an allowance for an old taken in exchange, the commissions would be paid only upon the $75 cash involved in the transaction. No commission would be paid upon the allowance. Our books are so kept that you can tell the commission paid on each one of the sales specified in the account.

The next item on page 25 of the Account is Commercial and Selling Overhead, represented by District Managers' Salaries, Branch Offices, Collections, Exchange, Insurance, Interest, Legal Expense, Office Payroll, etc. This represents the proportion of the total of the items set forth on page 23 of this Account that apply to the sales enumerated herein. The percentage applicable to these scales *are* found to be 39.6%, so that this percentage of the total on page 23 was assigned to these cylinder scales. That percentage was found in the same way as Factory Overhead, except that it was based upon the sales instead of labor and materials. I took the total amount of sales against the total commercial and selling, less the commissions which are shown as a separate item. With that percentage arrived at, I applied it to the commercial and selling to get the proportion for these sales.

"The next two items refer to Losses on Customers' Accounts and Losses on Agents' Accounts. I did not take out of the books the losses on these particular sales. The losses were approximately 4% of the total sales, and that percentage was charged against the sales enumeraated in this account. I did not try to go through the books and find the actual losses on these scales.

"The next item, Depreciation on Buildings, is the proportion of the depreciation account applicable to these cylinder scales at the rate of 5%. That was taken in the same way as 5% on these sales in the account.

"The next item, Interest on Capital Invested, was figured at 5% on the capital actually invested in the business on this proportion to these particular scales included in this report, the proportion being taken on the basis of sales. I had already apportioned a part of that interest on the basis of 39.6% in commercial and selling overhead.

This interest charge is 5% on the capital invested and pro rated over these asles shown in this report. I took the total sales
61 and found what percentage these sales shown on this report represented of total sales. I don't recall what percentage I found. I have not the record with me. It was based on sales for the whole year 1911.

The 1912 account is made up in the same manner as that of the 1911, and all the answers for the 1911 account will apply the same to the 1912 account, and the 1912 period covers from January 1st to September 6th, 1912.

The Factory Overhead accounts are shown for the whole year 1912 so far as the enumeration of all the expenses are shown. I have enumerated certain accounts as commercial and selling expense for the whole year 1912, and then apportioned these accounts to these cylinder scales sold in 1912. The percentage of factory overhead to labor and material in the year 1912 was only 72.7% as compared with 84% in the year 1911.

Also the proportion of commercial and selling apportioned to sales of cylinder scales for the 1912 period is 37.1% as compared with 39.6% for the year 1911.

The commissions were taken directly from the accounts themselves. We could not go to the accounts for the losses in the same

way as the commissions, because the accounts themselves are not identified in that way. The Losses on Customers' Accounts could be traced, but the losses on the agents' accounts I could not trace, and this represents the losses on agents' accounts and not losses on particular scales. As, for example, if an agent embezzled some money and got away with it, the amount would have to be charged as a loss on agent's account. Similarly, if a particular account could not be collected and was absolutely lost, the loss would have to be charged to losses on customers' accounts. These losses are only chargeable when they are an actual loss.

Now and then we took back scales on which some money had been paid and the customer might have been reimbursed for money paid in some cases. In a case of that kind I would not show what we made on the first unsuccessful sale as well as on the second sale.

The proportion of Depreciation on Buildings was taken as 5%, and the interest on Capital Invested was taken at 5%. The amount of interest applicable to the particular scales in this report was then ascertained by taking the percentage of capital invested on sales reported in this report.

62 Saturday, February 13, 1915—10 o'clock a. m.

Counsel for plaintiff requested that they be permitted to put accountants on the books of defendant company for the purpose of making an examination to determine the number of cylinders sold by the defendant company from a period commencing six years prior to the filing of the bill of complaint herein down to the time of the expiration of the patent and for the further purpose of testing the accuracy of the account filed herein by the defendant for the period of time it covers. Counsel for defendant objected to an examination into the books except as to the period covered by the account heretofore filed herein on the grounds, as they claimed, that no infringing drums were sold prior to that date.

Arguments were made by counsel for the respective parties and the hearing adjourned.

Tuesday, February 16, 1915—9:30 a. m.

On a further consideration of the right of the plaintiff to have access to the books, records and papers of the defendant for accounting purposes, it is ordered that the expert accountants of the plaintiff have access to and be permitted at the place of business of the defendant at Toledo, Ohio, during business hours, to examine and make extracts from the books and papers of the defendant regarding all cylinder drum scales manufactured or sold by it during the period of six years prior to the commencement of this suit and down to the expiration of the plaintiff's re-issued patent infringed for the purpose of stating as to the profits of the defendant made by the manufacture and sale of the infringing drums.

Mr. Meads: To which order the defendant objects for that the order requires the defendant to submit to the agents of the plaintiff

books, papers and other articles covering business outside of that involved in this case and outside of that required by the order of the court under which the reference is made.

The Master: Objection overruled.

On November 26th, 1915, the next hearing was set for December 9th, 1915, it having been previously agreed between parties that in view of the fact that the books of defendant are voluminous and are in use, such testimony as could be more advantageously
63 taken where the books are present, should be taken before the Master at Toledo, Ohio, and on December 9th a postponement until December 13th was taken at the request of the defendant.

December 13, 1915.

Met at Toledo, Ohio.

ORWELL C. REEVES, a witness called by plaintiff, testified as follows:

Direct examination.

By Mr. Zane:

"I am the superintendent of the factory of the Toledo Scale Company and have been employed by this company, formerly known as the Toledo Computing Scale Company, since October 1, 1905, first as master mechanic for about a year, and was then appointed Superintendent, which position I continue to hold. I was with the Toledo Computing Scale Company when they began making cylinder scales and believe they began making them early in 1907, or 1906, I don't know which.

"I am generally familiar with the style or type numbers of the cylinder scales. These type numbers were given in the Office, as distinguished from the Factory end of the business. The first type of cylinder scale I remember was No. 300. I remember type No. 81. I don't know when we began to make that. That record would be in the office. When the scale leaves my superintendence, it is complete. I do not remember all of the types of cylinder scales that we have made, and do not know of any record in the factory that would refresh my memory in this regard. When the scale is completed in the factory we give it the serial number, and these numbers are applied consecutively to scales as they are built, without regard to whether they are cylinder or fan type scales. The serial number on the scale to which you have called my attention, marked Complainant's Exhibit, Defendant's Scale, is upon the plate on the platter shot box. It is No. 46741. The style number of the scale is also marked on this plate. It is No. 345. I do not remember when the serial number, 46741, would have been put upon that scale. I do not know in what year the 46000's were placed on the scales.

Then testimony as follows:

64 Q. You know Mr. Zolg, don't you?
A. Zolan?
Q. Zolg?
A. Oh, yes.
Q. Did you ever supply him with the cost figures—there is no use asking that. He stated that you supplied him with the cost figures of cylinder scales in 1911 and 1912, sent out from the factory. Now, let me draw your attention to the Sheet No. 21. You supplied Mr. Zolg with the figures for labor and materials in the different scales mentioned on that page, did you not?
A. I don't know whether that is the record or not. I gave the accounting office, I don't know whether it was Mr. Zolg particularly, a record of some costs, the best we could get together.
Q. The cost of labor and material?
A. Yes; they are not made from costs.
Q. What is that?
A. I say, they are not taken from cost records because we had no cost records.
Q. But they were figures gotten up by you?
A. Yes; representing the cost of those scales to the best of our ability.

"I know the cylinder scale, style No. 81. I do not know of No. 83 scale. We might have had one No. 84 for we made some with an extra length column, and changed the number on that account. There were only a few made, however, and I am not familiar enough with those numbers any more, to say. I do not remember a No. 85, 86 or 87, nor 184, 181, 182, 183, 186, 187 or 188. I remember No. 300. I do not think we had such a style number in 1911 or 1912."

Then testimony as follows:

Q. How did that scale compare with the other three hundreds, what was the difference?
A. Well, I could not say just in what particular it did vary, probably slightly in design, the construction generally being the same.
Q. Well, generally speaking, its cost as to labor and material would not be different from your other three hundreds?
A. I think it would be a little higher?
Q. A little higher; how much?
A. I could not say.
65 Q. What would cause it to be a little higher?
A. We were not familiar with the construction of it, the building of it, and made it in smaller quantities. I am only assuming that, however.
Q. Well, I want the facts from you, not assumptions.
A. I can't tell you.
Q. You can't tell about the cost of the three hundreds?
A. I could not; no.

"The series of scales with styles No. 81, 82, 83, 84, 85, 86, and 87 were generally of the same design. There would be minor changes in construction. The scale type number 300 is the first cylinder scale I recall. The next one I recall was No. 345 and 344, 346, 347. The 300's differed from the 344's in minor modifications; the 344 was an improved scale. I do not recollect the selling price of either the 300 or the 344, but I think the scales first designed were supposed to be sold at $100, and then it was made $125. The scale before us, marked Complainant's Exhibit, Defendant's Scale, is a 345, and that scale is a much improved scale over the 344, the improvements being in strengthening the supporting members and improvement in workmanship—that is making the parts, such as the chart construction, pinions, bearings, and all mechanisms generally, more accurate. The scale numbered 345 would cost more than the 300 and more than the 344. I do not remember the sales price of the No. 345 scale, but I see in the catalog dated Feb. 15, 1909, which counsel has furnished, that the scales, Nos. 345, 6, 7, 8, 9, and 350 were priced $140 for blue finish, and $155 for gold finish. In the same catalog, I see that the No. 344 in blue finish was priced at $125. The mechanism of the 345 was improved over that of the 344, and it was a different design and a better finish, the difference in design being that the No. 344 had no supporting member for the casing at the top; it was stronger and more substantial. The 345 was a better scale, with a capacity of 20 lbs., cylinder chart and ornamental brass trimmings, having a removable dash pot, and lock-nut leveling screws to prevent tampering with the scales while they were on the counter. Also the 345 was provided with glass openings in the ends of the cylinder so that you could see into the housing. The No. 345 was made practically dust-proof. The 346 differed from the 345 only in the fact that its capacity was 24 lbs. The 347 differed simply in the chart, the range of pieces being different. The No. 348 differed in that it had a capacity of 15 lbs. The No. 349 differed in that it had a gross, tare and net weight chart. Any cylinder scale could be equipped with this tare weight chart at an additional price. The No. 350 was a much cheaper scale to make, in that the expense of making the chart is nominal compared with the expense of making a computing chart. The cost of making and producing the scale itself is no greater than that of the 345, but the cost of putting it on the market would be a great deal less."

(The pages or price lists from the catalog produced by counsel and to which the witness referred, saying that it was one of their price lists of February 15, 1909, were marked for identification Plaintiff's Exhibits Nos. 2 to 6, inclusive.)

"The No. 81 scale was a cheaper scale. It did not contain selected stock, but used parts that were defective in pendulum weights and inferior finish. As between themselves, the scales Nos. 81, 82, 83, 84, 85, 86 and 87 differed from each other simply in chart and capacity, so that their cost would be practically the same, though because of the inferior finish and parts, the cost of production would

be less than the 345 series. I do not remember just when the scales numbered 81, 82, 83, 84, and so forth were brought out. I know that in the catalog produced by counsel and sent out February 15, 1909, the scales numbered 181, 182, and so forth are not listed. If they were not listed, we were not producing them at that time. I do not remember how the scales numbered 181, 2, 3, 4, 5, 6, 7, and 188 differed from No. 81. I guess generally more in the finish."

(Counsel here produced price list of Toledo Computing Scale Company, dated July 1, 1910, advance notice of scales 381 to 388, and had it marked for identification, Plaintiff's Exhibit No. 7.)

"I see that in the catalog just referred to, the advance notice of scales No. 381 to 388, is given. In this catalog is also listed scales No. 181 to 188, all of them being cylinder scales. The difference between the No. 181 and the 182 is that in the 182 the cylinder is raised several inches higher than in a regular cylinder scale, so that it would be adapted for use on a lower counter or by a taller person. The No. 183 and 184 differed from the 182 in
67 having electric illumination—when weight is put on the platter the light would automatically illuminate the chart on the customer's and merchant's side. The Nos. 185 and 186 are smaller cylinder scales of the same construction and the Nos. 187 and 188 are the smaller scales with the electric illumination. These scales were used mainly for delicatessen purposes and had a smaller capacity, but a higher price range."

Then testimony as follows:

Q. Now, on Sheet 21, for the year 1911 of the Defendants Account heretofore filed, you have given the labor and material cost, or that labor and material cost is taken from what you furnished Mr. Zolg, so far as you know?

A. Yes.

Q. Now, in the preceding years, 1910 and 1909, the cost of labor and material was slightly lower, was it not?

A. I don't know; I could not say.

Q. Well, it is your experience, is it not, that wages have been increased slightly?

A. Wages have.

Q. What?

A. Wages have been increased.

Q. Yes. Now, how about material, has not that been increased?

A. Not necessarily?

Q. Well, would you think that the prices of, cost price I mean, the cost of production for the scales 381, that series, up to 388, or rather, 181, up to 188, was lower during 1909 than 1908?

A. I don't know were those submitted to you as absolute costs.

Q. Well, this is in the account, that's all.

A. Well, we have no Cost Department, you know.

Q. I understand that, but what I want to get is your judgment whether in the years 1909 and 1910 the cost of production on those

scales was, in your judgment, up to the figures you have given here on Page 21 or less?

A. I would not know. I have no means of verifying it at all.

Q. In your judgment it would not be more, would it?

A. I would not say.

Q. Well, what would be your best judgment?

A. I have no idea of the cost of that at all.

68 Q. Well, when you made up these figures of cost, you satisfied yourself that you had reasonably approximated the cost of the labor and material?

A. When we got up those figures, we gathered together such figures as we had, but we have no Cost Department.

Q. Well, you gathered such data as you had?

A. We gathered all we had. Whether it is right or not, I could not say, nor whether we got them all.

Q. Could you gather such data as that for the year 1910 and the year 1909?

A. Well, I don't know whether we could or not? I don't know what reports we have. We make no effort to keep cost records.

Q. You have never attempted to?

A. No sir.

Q. Now, the scales No. 181 in the series up to and including 188, were a higher price scale than the series 81 up to and including 87, were they not?

A. Why, the price list says so, yes.

Q. Now, how were they superior, in what ways?

A. The finish was changed. I suppose mechanically there were some improvements too. These scales, as I remember, were all trimmed differently.

Q. Well, they were better finished?

A. They were better scales, better finished, and better mechanically.

Q. And of course they represented more labor?

A. Yes.

Q. Do they represent more material?

A. They would not represent more material, but possibly more expensive material.

Q. More expensive material?

A. Yes.

Q. Now, the series of cylinder scales from Nos. 381 to 388, both inclusive, was still higher priced scales than the 181 series?

A. Yes.

"The 382 scale differed from the 381 in having the elevated cylinder. The Nos. 383 and 384 differed from each other in having the elevated cylinder and from the 381 in having electric illumination. The Nos. 385 and 386 differed in having the elevated cylinder and are smaller scales than the 383. The Nos. 387 and 388 were

69 the same as the 385 and 386, provided with the electric illumination, and differed between themselves in that the 388 had the elevated cylinder. The 381 series were higher priced

scales than the 181 series, and were improved in material and workmanship. A very marked change took place in our design and construction at that time. In the new design the base horn and general mechanical construction was all changed. We improved the mechanism, put on better finish and re-designed the scale generally."

Then testimony as follows:

Q. Well, that all represented a greater cost?

A. Oh, yes, it represented another step, another evolution, it was a design, and everything of that kind that warranted the increased price.

Q. So, gradually your scales were getting costlier to make?

A. Supposed to be.

Q. Well, in your judgment, that is what I mean.

A. I didn't know. I never looked over cost sheets. We never have cost sheets to look over.

Q. Well, you know there was more labor and better material?

A. There was more labor involved, yes.

Q. Yes. And more expensive material I mean to say were in all of them?

A. Yes.

Q. As the time went on?

A. Yes, and you can imagine we were getting them out in bigger quantities, so there would be a chance for a reduction in that way, so I say I do not know as to the cost of the product.

Q. Comparative cost?

A. No, they were built for quality rather than cost.

"The No. 395 scale was a small sized cylinder scale, and the No. 397 was the same scale, of the same mechanical construction, electrically illuminated. I do not remember in what year we brought out the series beginning with No. 581, but that series No. 581 to 581, inclusive, represents our latest improved scale, and differs in workmanship and finish from the No. 381. There was a little higher quality of work and finish. The No. 582 differed from the No. 581 in that it had the elevated cylinder. The 583 was provided
70 with electrical ilumination. The No. 584 had the elevated cylinder and the electrical illumination. I do not remember a 585. We had the 595, possibly a smaller cylinder. I do not recall the 585 unless in that series it had the tare chart, nor do I recall a 587. I think that is what they would be. I do not know of any one in my department who is more acquainted with the different styles of scales than I am. We had to take them out of the price list.

"I do not remember any number 30 cylinder scale—we had a scale No. 30, but it was not a cylinder scale.

"In putting the serial number on a scale, I do not know where they began numbering. I was not employed by the company at that time. At the present time, they number the scales consecutively, regardless of the style of the scale, or its size or kind. For example, a scale with serial number 50,000 might be a cylinder scale, and 50,001

might be a fan scale, and 50,002 might be a heavy capacity scale, and 50,003 some other kind of a scale. That would be equally true of the numbers starting from 40,000, and so far as I know, we would have exhausted all the numbers between 40,000 and 50,000 before starting in with 50,000. The serial number is put on the scale in the Assembling Department, where the scale is built. We have several men in charge of the assembling; Mr. Mould is the head of the counter scale Assembling Department, counter scales being those that are built for butchers' and grocers' counters, all cylinder scales falling under the head of counter scales. Mr. Mould would know how those serial numbers run, though he doesn't build all the cylinder scales. Mr. Hulstede builds part of them.

"After examining the scale before us, marked Complainant's Exhibit, defendant's Scale, serial No. 46741, which I have never seen before to my knowledge, I would state as my opinion that the chart spiders are of steel. The spiders are formed with cross arms radiating out from a central hub, and supporting a periphery. The hub is of solid brass, bored for a spindle and riveted to the spider. These spider arms are slotted, an dare formed of flat pieces of steel, bent at right angles to add stiffness and strength. I do not know what the thickness of one of those spiders is, but I would estimate about 20 thousandths. I could not say how long we con-
71 tinued to make those spiders of steel. The first scales we built had steel spiders, and we abandoned them because the steel rusted, and made them of aluminum, and then we found difficulty in getting aluminum at times, and we have made them of both steel and aluminum. The aluminum spiders were not any thicker than the steel ones. I surmise about 20 thousandths of an inch. If I can't get a piece of stock 18/1000 we get one of 20/1000, and if we can't get 20/1000 we get 30/1000."

(The witness here had the spider measured for thickness and found it to measure 19 thousandths in some places, 18 and one-half thousandths in others, and 18 in others, the average thickness being about 18 and one-half thousandths.)

"The steel spindle extends through the length of the chart, and is one-fourth inch in diameter. The length would be approximately 15 inches, with the ends hardened and round. The brass hubs are provided with a flange of about three-fourths inch diameter. The portion of the hub other than the flange is approximately one-half inch in diameter. The hubs are about one-half inch in length. The counter balance weights, four of them, would weigh not more than one quarter of an ounce. They are simply put on to balance the chart evenly. It is immaterial as to the weight of these counterbalance weights."

Then testimony as follows:

Q. Now, in making up this labor cost, you begin the labor where, in making up your estimate of cost you begin with the labor on the scale, on the making of it, what is the first item of labor?

A. They were not made up by me. They were made up by some of the clerks. Just how they started on that, and what they did, I do not know. They gathered all the information relative to the information on the hub and then took the housing and went generally and gathered all the costs they could.

Q. They took the different parts of the scale and put all the labor on each part together?

A. I imagine that is the way it was.

Q. Yes; to make the cost of the scale. Now, the material, does that contain any more than the cost of the raw material as shown by the invoice?

72 A. I don't know.

Q. Is there any freight in there?

A. I don't know that.

Q. Do you know who made up that figure?

A. I could not say now.

Q. Well, who would? If you wanted to get the figure, whom would you go to?

A. Well, we have no regular department for that purpose. I would have to make a selection of some clerk.

Q. Well, when you were asked for these items, to what clerk did you go?

A. I really don't know who made those up. I don't know as there was much consideration given those, as far as the importance of them rather. They are not even signed.

Q. At any rate, they were made up by clerks and you don't know whom?

A. They were made up by clerks and I don't know whom.

WILLIAM A. ZOLG, recalled as witness for the plaintiff, testified as follows:

Direct examination.

By Mr. Zane:

"I am the same Mr. Zolg that has already testified in the case. I was asked to ascertain the date that this scale before us, Complainant's Exhibit Defendant's Scale, was shipped from the factory, and I find that date was April 10th, 1908. That is the date the scale was shipped in fulfillment of a sale.

"Referring now to the factory overhead expenses of 1911, on Page 22 of the Account Furnished by Defendant, I find that these factory overhead expenses cover the 10 months' period of the year 1911, the figures for months of January and February being deducted from the total figures on the books, the total for the period representing the overhead upon the months from March to December, inclusive, 1911.

"With reference to the first item on this page 22, 'Indirect Labor,'—I am producing a ledger which shows that account,

73 'Indirect Labor.' This account is on Page 107 of the ledger and is made up of debit and credit entri , representing all

items of labor that we call 'Indirect Labor'—labor that is not directly charged to scales, departmental labor and departmental clerical work, etc. I do not know just how far those items of indirect labor carry us with the completion of scales. We have charges for labor in the account called 'Packing and Shipping'; also in the account 'Maintenance, Repairs and Alterations'; and in the account 'Miscellaneous Factory Expenses.' In my statement of Factory Overhead on Page 22, I have made separate items of the accounts Packing and Shipping, Maintenance, Repairs and Alterations, and Miscellaneous Factory Expenses. Referring to the April entries in the account, 'Indirect Labor,' the total debit entry is $2,084.23. There is a credit entry for $496.79. The figure that I have used for the month of April is the net, or $1,587.44—that is, the credit is deducted from the debit entries to find the particular item I have entered for the month of April. The same is true for all the other months. The amount is for April $1,587.44; May, $2,054.27; June, $2,332.19; July, $2,280.29; August, $2,305.26; September, $2,987.47; October, $2,311.32; November, $2,249.77; December, $2,788.61."

"We have an account on our ledger for the second item on Page 22, 'Factory Supplies,' the account being on page 118 of the ledger. This acount also consists of debit and credit entries—everything that is expended for factory supplies is debited, and everything that is obtained back from factory supplies is credited. To obtain the amount I have used in my report, I deducted the total for January and February entries from the total for the entire year. The total is $13,259.27. The deductions for January and February are $2,342.38, not including the inventory adjustment. I am unable to explain where that entry, inventory adjustment, that I have thrown out, came from. The method by which the inventory adjustment was made is when the supply inventory, taken semi-annually, was taken and showed a decrease over the previous year or the previous six months, the supply account was charged with that decrease. We obtained the data for the inventory adjustments from the factory office after they have taken inventory and
74 and found to be $1,033.12 less, and the inventory adjustment put through accordingly. The only way I can explain this is that the figures were made up for twelve months without this inventory adjustment. I mean that the figures used there, $9,888.77, were the ten months, very likely, without the inventory adjustment."

"The next item on Page 22 is 'Experimental,' for which we have an account on our ledger. The amount used, $9,597.12 is the total for the 10 months, March 1st to December 31st, 1911."

Then testimony as follows:

Q. Now, beginning with March, the first entry there is March 2nd, $.85. Where is that entry taken from?

A. It is taken from the Cash Disbursed Journal.

Q. The letters there are C. D?

A. C. D.

Q. That means Cash Disbursed?
A. Disbursed, Yes, sir.
Q. That would be entered on the Cash Book?
A. On the Cash Disbursed Journal.
Q. Now, can you tell me what that is for, what the disbursement is actually for?
A. Yes, sir. I presume from the Cash Disbursed Journal. By getting down the Journal and finding out what it was for, I presume that would tell us if it is itemized; I don't know whether it is or not, I cannot say.
Q. It is so small I don't think we had better spend any time on it, $.85; the next is Salary A. De Vilbiss."
A. Yes, sir.
Q. Now, Mr. De Vilbiss holds what place here in the factory?
A. He was in the experimental room to my knowledge.
Q. He was an inventor, was he not?
A. Yes, sir.
Q. Now, do you know what kind of scale he was working on at that time?
A. No, sir.
Q. The entries of his salary during the month of March are March 3d, $110; March 10, 119; March 17, $110; March 24, $110; March 31, $110. The factory paid Mr. De Vilbiss $550 during that month?
A. Yes, sir.
75 Q. For inventing work that he was doing, but you don't know what that work was?
A. No sir.
Q. Have you any means, can you refer to any book which would differentiate that work done by Mr. De Vilbiss as to what it was being done on, whether on cylinder scales or fan scales or some other kind of a scale?
A. No sir.
Q. That cannot be told from your books?
A. No sir.
Q. Have you any information here in this factory that would determine what Mr. De Vilbiss was doing during that month of March?
A. I don't know.
Q. You don't know whether you have or not?
A. No sir, I do not.
Q. Well, is there anybody around here who does know?
A. I don't know, I could not say.
Q. Now, the next item is March 31st, Pay Roll for the month, $807.27. That represents the entry from the Journal, does it not?
A. Yes.
Q. Now, will you refer to the Journal and find the items of that, total $807.47?
A. I don't think I can refer to get the individual items for that, no, not off the Journal; it is just one item, shows a total of $807.27.
Q. Where can you get the individual items?
A. From the pay roll book.

Q. The Pay Roll Book?
A. Yes sir.
Q. That would show what?
A. Simply show the names of the men and what they got during the particular month, that's a monthly entry, yes, an entry for one month.
Q. Well, can you tell now what those men were working on?
A. No sir.
Q. And so far as you know there is no other means of ascertaining it?
A. Not to my knowledge.
Q. Now, the next entry is March 31st, P. J.——
A. Purchase Journal.
76 Q. —$15.32; that represents purchases of supplies for experimental work of some kind?
A. Very likely.
Q. Now, the month of April represents the salary for four weeks or three weeks, is it, of Mr. De Vilbiss?
A. Three weeks.
Q. Three weeks of Mr. De Vilbiss, and the Pay Roll for that month, $643.09?
A. Yes sir.
Q. And your answers would be the same as to those items?
A. Yes sir.
Q. And your answer would be the same as to the entry April 29, Purchase Journal, P. J. $35.48?
A. Yes sir.
Q. Now, in the month of May you have Ft., cash disbursement, 33c. What was that or?
A. It is probably an abbreviation for freight, I imagine.
Q. Freight on something either sent out of the factory or coming into the factory?
A. Probably.
Q. But you don't know what it is?
A. I don't know what it is, no, sir.
Q. May 31st, the entry from the Purchase Journal is $44.26. You don't know what that was for?
A. No sir.
Q. And you don't know for what sort of experimental work the purchases were made?
A. No, sir, I do not.
Q. Have you any means of identifying that from your Purchase Journal?
A. I don't know.
Q. Will you be good enough to produce the Purchase Journal for this year 1911 and let us see that?
A. Yes sir.
Q. By the way, bring the Pay Roll Book at the same time.

(Witness produces books.)

Q. Now, the entry April 29. Purchase Journal, $35.48.—You produce a book entitled "The Purchase Journal Book" and point to the entry for April 29th. Now, that entry, $35.48, for
77 April 29, 1911, turn to your Purchase Journal Book and give me all the information that that book has upon that subject.

A. Shows a bill of March 29, Hamilton Foundry, $5.90, another bill on April 6 -or 74c. to the Hamilton Foundry; another item on March 29, U. S. Aluminum, $1.78; on March 19, F. Bissell, 70c.

Q. Who is F. Bissell?

A. F. Bissell Company.

Q. Then, Bissell Company, what business is it engaged in?

A. Electrical I think, electric supplies. The next item on April 10, Fairbanks, Morse & Company, $16.17.

Q. Does it show what that was for?

A. No sir.

Q. The next item on April 11, Hamilton Foundry, $2.82; on April 12th, Hamilton Foundry, 50c.; on April 25, Hamilton Foundry, $6.62; on April 21st, C. G. Stephens, 25c. Do you know what C. G. Stephens does, what he is engaged in?

A. No sir.

Q. How much is it?

A. 25c. That's all.

Q. That makes your $35.48 of purchases for that month?

A. Yes sir.

Q. Now, have you your Pay Roll Book here?

A. Yes sir.

Q. Does that show anything more than just the name of the workmen and what they were pa*yed*?

A. That's all.

Q. Now, during the month of March what are the names of the workmen?

A. C. H. Hapgood, S. N. Ross.

Q. How are you able to identify where these men were working?

A. I remember these names.

Q. You say you can remember those names as being engaged in the experimental work?

A. Yes sir, they are charged to the Invention Department or Experimental Department.

Q. Where are they charged to the Experimental Department on this Pay Roll?

A. Off of this Pay Roll when the entry is made up.

78 Q. This is a general pay roll for the factory?

A. No, this is the office pay roll, but these particular people are paid on this book.

Q. Yes. S. N. Ross. Now, who else?

A. E. E. Ulrich, C. L. Wetzel, E. Menz, S. Eckland.

Q. Those are all, are they, for that month?

A. That's all.

Q. And the wages paid to them make up that item Pay Roll for that month?

A. They should, yes.

Q. Now, while Devilbiss was working here, was not there a written contract with him?

A. I don't know.

Q. Well, when work was done, was not there written authority given for what should be done?

—. I don't know that.

Q. Where did you get your directions as to the amount of salary paid?

A. I don't know that I got it from anybody, that is, I could not say, I don't know.

Q. Was there a check made out?

A. A check made out, yes, that was the check.

Q. And it was entered on the Cash Disbursement?

A. Cash Disbursed.

Q. Cash Disbursement Journal, and you took it from the Cash Disbursement Journal?

A. Yes, sir.

Q. You don't know who directed the making of the check?

A. Well, that was a weekly affair. I don't know where the order originally came from, no, sir. I presume it was from Mr. Theobald.

Q. Now, your answer for the whole of that Experimental Account as to Pay Roll and any other items there, salary or otherwise, you are not able to tell from anything which you have what those men were working on?

A. No sir.

Q. And as to the disbursements for purchases you are not able to tell what those purchases were?

A. No sir,

Q. Mr. De Vilbiss' salary stops apparently in April, at the end of April, does it not, 1911?

A. Apparently, yes.

79 Mr. Zane: Was that the time of his death?
Mr. Meads: I think it was.

Q. Now, do you remember who was in charge of that experimental work after Mr. De Vilbiss' death?

A. No, I don't.

Q. Coming down here to October you have "Salary S. N. Ross, $23.50," do you know what that was for?

A. I don't know unless it was probably that he was off a week, and the money was disbursed directly off the Cash Disbursed Journal, I don't know.

Q. You don't know how that entry comes there?

A. I don't know. I don't recall.

Q. This entry under December 15, "Salary Mr. Templeton, $250," do you know what that means there?

A. That's a Cash Disbursed entry, too, check drawn for it; I don't know.

Q. Under December 30, $1,029.15, what is that?

A. Journal entry, I presume Pay Rolls.

Q. Well, can't you tell?

A. From the Journal I probably could. I don't know. I might be able to tell from the Journal.

Q. Well, the Pay Roll has suddenly jumped, has it not, from $821.14, up to $1,029.15?

A. There may be five weeks in that, I don't know.

Q. Well, you think all these entries in this account or entries from the Journal are the Pay Roll Accounts, don't you?

A. Well, I would not positively without looking at the Journal, I could not say positively just from these figures that that's what they are, no.

Q. Now, there are certain credits on this account. What is that credit there, January 31st, 1911?

A. I don't know.

Q. Well, what does it say there?

A. I don't know, what that is "in or on 1/10 Pay Roll"; I don't know what that's for.

Q. You don't know what that is?

A. No, I don't.

Q. That's a credit at any rate?

A. Yes.

Q. Did you reach your total for the ten months by deducting credits for those ten months?

A. Yes.

80 Mr. Zane: At this point we would like to read into the record this account on the books beginning with the first entry for March and extending down to the end of the year with the credits items for that period, the account on page 122 of the Ledger of 1911.

(Said Experimental Account on page 122 of the Ledger is in the words and figures following:)

Experimental.

1911.

Mch. 2.	.....	CD	.85
3.	Salary A. De Vilbiss.....	"	110.00
10.	" "	"	110.00
17.	" "	"	110.00
24.	" "	"	110.00
31.	" "	"	110.00
"	Payroll	J	807.27
"	.....	PJ	15.32
Apr. 7.	Sal. A. D. Jr.....	CD	110.00
14.	" "	"	110.00
21.	" "	"	110.00
29.	Payroll	J	643.09
"	"	PJ	35.48
May 2.	Ft.	CD	.33
31.	.....	PJ	44.26
"	.....	J	640.87
June 30.	.....	PJ	18.06
"	.....	J	630.73
July 31.	.....	PJ	40.41
"	.....	J	906.38
Aug. 31.	.....	PJ	27.06
"	.....	J	755.36
Sept. 30.	.....	J	996.29
"	.....	PJ	39.15
Oct. 10.	Saly. S. W. Ross.....	CD	23.50
31.	.....	PJ	6.06
"	.....	J	841.29
Nov. 15.	.....	J	6.77
29.	.....	PJ	98.71
"	.....	J	821.14
Dec. 15.	Saly. Mr. Templeton.....	CD	250.00
30.	.....	J	1,029.15
"	.....	PJ	59.42
			12,057.48

81

1911.

Sept. 15.	Per Credit memo.....	J	.96
" 25.	" " "	J	1.25
Nov. 16.	" " "	J	17.62
Dec. 30.	By Loss & Gain.....	J	11,926.75
			12,057.48

"For the next item, 'Tools and Patterns,' we have an account on the ledger, and the figures we used represent the net between debits and credits for the 10 months beginning March 1st, 1911, and including December 31st, 1911. I don't know whether the inventory adjustment was taken in or not, the inventory adjustment in this case being handled the same as for Factory Supplies. We take an inventory of tools and patterns twice a year. On June 30th, we have an entry on the credit side of the account, 'June 30, inventory adjustment, $2,083.36.' The inventory is figured in the factory office. They invoice or appraise the tools there. I do not now recall just what the other entries on the credit side of this account refer to, it might be work that had been charged to Tools and Patterns and was later found to be chargeable to some other account and credited to Tools and Patterns.

"For the next item, 'Packing and Shipping,' we have a ledger account on Page 128 of the ledger."

Then testimony as follows:

Q. Now, does this account, "Packing and Shipping," include the Packing and Shipping for shipments to Canada?

A. Do you mean materials going into Canada?

Q. Yes.

A. I believe it does.

Q. By the way, when did you open the Windsor factory in Canada?

A. I don't know in what year the Windsor factory was opened.

Q. Do you ship anything from here to the Windsor factory?

A. Parts.

Q. Well, what do you mean by parts?

A. Scale parts.

82 Q. All the different parts of the scale?

A. I can't say what parts, but I know there are parts going to Canada.

Q. What sort of parts, for instance?

A. I don't know what they are. I know we make charges against Canada for materials purchased for them, but what they are I do not know.

Q. Have you such an account on your ledger?

A. Canadian Material?

Q. Yes.

A. I presume we have; we did have. Yes, I guess we had a separate ledger for this.

Q. Separate ledger?

A. Separate Canadian ledger. I see no Canadian accounts in here. We must have had a separate ledger.

"In the Material Account at page 110, under the date May 31st, 1911, "C," $532.40, a credit to Material Account. I don't know what "C" means. In our Loss and Gain Account the item December 30th, 1911, Canadian gain $24,080.32 is gain on Canadian sales."

"Now, for the next item, 'Lumber,' we have an account on the ledger. I do not know whether it includes any lumber used for shipping, for Canadian shipments or others.

"For the next item, 'Trucking,' we have a ledger account that includes all trucking for the factory, whether sent to Canada or elsewhere.

"For the next item, 'Maintenance, Repairs and Alterations,' we have a ledger account on Page No. 134, and we have used the totals for the 10 months beginning March 1st, 1911. The items in this account cover all kinds of building-repairs, mill-wright work and general repairs and alterations in the factory. This account also has an inventory adjustment, though I do not know what is covered thereby. I do not know whether the various charges to this account increased the value of the property. I do not know what the debit entry, inventory adjustment, June 30th, and the same entry of December 30th, nor the credit entry, inventory adjustment, December 30th cover.

"For the item, 'Re-finishing Expense,' we have a ledger account, Page 142, consisting of debit and credit entries, representing
83 pay rolls and supplies in connection with the Re-finishing Department. This account is debited with the salary of J. R. Whitbeck, who had charge of our Re-finishing Department at San Francisco. This account includes the labor, and so forth, for work done on second-hand scales, both in re-finishing a Toledo scale to be sold again, or for rebuilding the second-hand scales of some other company, for all work done on scales taken in exchange, both our own and others. I cannot tell without looking up the entries just what the credit entries on this account are for.

"On investigation, I find one of the credit entries refers to an invoice on March 21, $62.12, for scrap. These sales of scrap from this Department are entered as credits to this account, also probably repairs on scales for which charges are made. The account is headed Rebuilt Department Expense. I have called it, in the account, Refinished Expense.

"Some of the re-finish work was done away from the factory—in San Francisco and in Indianapolis. Whitbeck was at San Francisco, and Wacke was at Toledo, and O. M. Orebaugh, was District Manager, I think, at Indianapolis. We had a re-building department."

(The debit and credit entries of this account, "Rebuilding Department Expense," on page 142 of the ledger, beginning with the items of March 1st, 1911, and including the entries of December 31, 1911, were offered in evidence.)

"Said account was entitled Rebuilt Department Expense, and shows upon the debit side thereof rent and pay roll payments for each month, and salary payments to J. R. Whitbeck and F. W. Wacke, supplies and material, packing and shipping, tools and patterns, expense payments to O. W. Orebaugh, car tickets and repair expense at San Francisco, packing cases, and inventory adjustment, in two items, of December 30th, totalling for the debit side of the ac-

count $23,039.62, and on the credit side of the account were various credits not marked, and at the end of said account, on the credit side an inventory adjustment of December 30th, and the loss and gain item of $21,223.67, totalling for the credit side $23,039.62."

"Referring to the Factory Overhead, I have given the percentage as 84%, and have testified that the method of obtaining this
84 percentage was by dividing the total labor and material of the whole factory into the total Factory Overhead. The figures I used were

Total labor and material	$132,905.04
Total factory overhead	111,827.16

By dividing the former into the latter figure I obtained the percentage, 84%."

"The Direct Labor Account on the ledger is on Page 105, and the total net expenditure between the 1st of March, 1911, and December 31st, 1911, was $66,049.59. This figure is net after deducting all the credits that appear in the account. The material account on the ledger begins on Page 109 and the net expenditures for material for the 10 months beginning March 1st, 1911, was $66,855.45. This, also, is a net figure after making deductions for all credits and making inventory adjustment. The inventory adjustment was necessary because of a decrease of inventory during the year. At the end of the year 1910 our inventory of material was $74,607.28. We make only semi-annual inventories and so had no inventory on March 1st, 1911. Accordingly, we used the figures of January 1st, 1911, and adjusted for a decrease that occurred between January and July, 1911. The ledger account shows that we made heavy purchases of material during January and February, but it does not show whether the withdrawals from stock were in greater or lesser amount than the purchases. I could not tell from the account what the withdrawals from stock were, and to have gotten this, I would have had to go through our stock records."

"The inventory of finished scales on January 1st, 1911, was $192,521.53, and on December 31st, 1911, was $170,912.75. The inventory of material on hand on December 31st, 1911, was $69,220.12. I think the inventory of work in process was included in material inventory in our figures. In making up this account I did not put any value upon the labor or material of the incomplete scales in process of manufacture. Accordingly, taking the adjustment for inventory in material we had an adjustment in 1911 of $9,447.02. The labor expended on scales in process of manufacture should have been taken into account, but the adjustment was made for the decrease during the ten months beginning March 1st, 1911,
85 and there was no adjustment made or attempted for March 1st, 1911."

"On page 1 of the Account Furnished by Defendant, I have listed 5 scales sold of the No. 81 type. These sales were taken right from the customers' ledger, and cover the scales sold during the 1911 period. The No. 81 was sold in Canada, as well as in the United States. I returned all the No. 81 style of scales sold during the 1911 period,

whether those scales employed steel cylinders or aluminum. I made no effort to ascertain how many No. 81 scales were sold during January and February of 1911, for I was instructed by counsel to begin my report March 8th, 1911. I do not know the total number of style 81 scales during the whole year of 1911, nor what the total number of style 82 scales sold would be. We have no summary of sales of individual scales or the different kinds of scales. They would simply be taken from our customers' ledger records. We have no record in our department that would show how many cylinder scales were sold in any one year or how many fan scales. Perhaps such a record is kept in the Order Department, though I have never seen such a summary, myself. The customers' ledgers I have mentioned are the Customers' Accounts, bound in a book of loose-leaf sheets."

(Witness here produces large bound book, one of the Customers' Ledgers.)

"These loose leaves amounting practically to invoices, are all we have that will show the style number of any particular scale sold, except the Shipping Books, which are bound books showing the scales shipped from the factory."

(Witness here produces one of the Shipping Books for 1911.)

"This Shipping Book contains spaces for tickets, consecutively numbered, showing the style number and color of the scale, the factory serial number of the scales shipped, the number of the order, the date on which the scale was placed in stock and the date it was shipped and the consignee. We have Shipping Books showing the serial numbers of scales back as far as 1906 at least. From these Shipping Books, as well as from the Customers' Ledgers, can be determined the style number of every scale sold."

86 "Returning to the Material Account. During the months of January and February of 1911, the purchases of material amounted to $22,883.51. These are the debits to the Account. The credits to this Account for the same months are $6,120.64. Some of these credits are charges for material shipped to our Canadian factory at Windsor. These purchases were originally charged into this Material Account and then credited to this Account when they were charged to the Canadian Journal. I do not recollect just what the smaller credits entering into this Account represent, and would have to look up the vouchers for each individual item. They probably would be charges made against other Accounts and credited to this Account. For instance, when material is withdrawn by the Shipping Department, this Account would be credited and a charge made to Packing and Shipping. The Canadian credits total $1,584.72.

"The inventory of finished scales was taken at an arbitrary valuation—33 1/3% of the list price.

"In the Account Furnished By Defendant, only scales sold—not scales made—were accounted for in the years 1911 and 1912. I began the Account on March 8th, 1911, the date I was informed they

began using the light chart. The scales sold are listed on Pages 1–17 of the Account.

"I did not myself make up all these lists of scales sold, though I did parts of it and I had clerks helping me. One of these clerks is named Emmenecker. I could not verify all of their work. So far as the part I made up is concerned, I reported every cylinder scale sold out of the factory in the 1911 period, without making any distinction as to whether they had aluminum or steel spiders. All these sales were of scales shipped from Toledo, or scales sold from consignment. I am willing to swear that during the period from March 8th, 1911, to December 31st, 1911, there were only 5 scales of the No. 81 type sold. Similarly, only one scale of the No. 82 type; no scales of the styles 83, 84, 85, and 87, and so on throughout the remainder of the scales listed as sold on Page 1 of the Account Furnished By Defendant, though the Account was made up partly by myself, and partly by others and the work of the others has not been entirely verified. I merely accepted the figures
87 that were rendered to me. I did verify parts, but I could not verify everything, because there were too many figures. I did not go through all of the Customers' Accounts, to verify those matters, and I could not tell what proportion of the amount of work I myself did, though I did a great deal of the work.

"I do not know where Mr. Emmenecker is now employed. He left our employ about a year ago. He was not discharged, but left on his own accord. I do not remember now just what other clerks assisted me in the preparation of the Account. Mr. Kiser, did a part of the work and another young man whose name I cannot now recall."

Then follows testimony:

Q. Now, in making up this account, so far as your work on it is concerned, which you know about, in reporting the cylinder scales sold, did you make any distinction as between scales with steel cylinders and scales with aluminum cylinders?
A. No, sir.
Q. You reported the steel?
A. Yes, sir.
Q. Is that the order you gave the other persons working?
A. Yes, sir.
Q. You were not able to tell, yourself, which were steel and which were aluminum cylinders?
A. No, sir.
Q. And those other persons working on the books were not able to tell, were they?
A. No, sir.

"In this Account we have taken in merely orders for sales taken from the Customers' Ledgers, where we knew the scale was shipped, and it was not entered here until the date of the actual sale when it is shipped from the factory. That is the sale."

Then follows testimony:

Q. Now, on Page 18 of the Account is given the list of scales on hand.

A. Yes, sir.

Q. Now, are those scales on hand September 3rd, 1912, or on hand when this Account was made out?

A. September 3rd, 1912.

88 Q. Did you make any distinction in scales on hand as to whether they were aluminum spiders or steel?

A. No, sir.

Q. That, then, is the list of every cylinder scale you had on hand?

A. Yes, sir.

Q. From what source did you get those scales on hand?

A. Well, the consecutive numbers, as they are shown on these Shipping Books not sold, leaving out all the consecutive numbers of the scales, one right after the other, and if the Customers' Sheets showed none of these scales sold, they were considered on hand.

Q. Well, the scale never got on the Shipping Book at all until it was actually shipped, did it?

A. No.

Q. Well, how did you find the scales that were on hand and unsold, if they were not yet on the Shipping Book?

A. By simply considering all the scales.

Q. Suppose they were shipped out on consignment?

A. If they were consignment, or what not, so long as they were not shipped to customers.

Q. Yes. If on consignment they are entered here. But I mean a scale in the factory not shipped, on hand. Where did you get that?

A. In exactly the same way. If there was no Customer's Sheet for the particular scale that we had shown in the consecutive record; if there was no consecutive Customers' Sheet, it was considered on hand, provided it was not on consignment.

Q. Suppose you had here a scale with all the different parts manufactured, and would not have assigned a consecutive number, would that appear?

A. Not if it had no consecutive number?

Q. That would not appear?

A. No.

Q. And such scales as that do not appear in this list on Page 18?

A. No, sir.

"Our inventory would show the parts of scales on hand. I do not know how soon they give a scale a number. That is done in the factory. We have a perpetual inventory of parts in the Stock Department that would show all manufactured parts on hand

89 for cylinder scales. I don't know whether they have a perpetual inventory of assembled scales. I have never seen such an inventory."

"Referring to Page 23 of the Account Furnished By Defendant, and headed, 'Commercial and Selling Expenses, 1911,' I wish to correct my statement that these were taken for the whole year 1911. I should say that these expenses were taken for the 10 months' period beginning March 1st, 1911. The first item, 'District Managers' Salaries and Expenses,' is shown in an account on our ledger, beginning Page 222. There are no entries for Canadian salaries, or anything connected with the Canadian business in this account.

"The individual accounts entered in the year 1911 show expenses for our district managers as follows:

H. F. Anderson, Chicago	$768.82
S. M. Harrington, Boston	1,105.39
W. H. Roberts, Indiana	2,487.06
W. W. Graham, Philadelphia	1,131.42
L. S. Miller, Buffalo	1,776.33
F. L. Ditzler, San Francisco	794.00
John L. Theobald, New York	450.82
F. H. Goadby, Pittsburgh	16.30
O. E. Schupp, Atlanta	970.29
Theodore Booth, Texas	709.70
F. A. Wallis, New York	127.80
C. J. Roberts, Pittsburgh	1,239.98

"The next item 'Branch Offices' is shown on our ledger in separate items for the different offices. In 1911 there are entries for the New York office, Chicago Office, Boston, St. Louis, Philadelphia, Dayton, Omaha, Minneapolis, Cleveland, Denver, Seattle, Kansas City, Milwaukee, Buffalo, Pittsburgh, Indianapolis, San Francisco, New Orleans, Cincinnati, and one account called miscellaneous offices. We have statements of monthly expenses of offices."

"Then testimony as follows:

Q. What is the document you hold in your hand?

A. That is a monthly statement of expenses, operations, etc.

Q. Statement of monthly expenses; will you allow me to see that a moment?

A. Yes, sir.

90 Q. Well, it is not only a monthly statement of the month of December, 1911, but it includes the 12 months ending December 31st, 1911.

A. Yes sir.

Q. Have you got a statement of this kind for every month of 1912?

A. Yes sir.

Q. Have you got a statement of this kind for the whole year 1910, and for every month of 1910?

A. Yes sir.

Q. The same way for 1909?

A. Yes sir.

Q. 1908?
A. Yes sir.
Q. 1907?
A. Yes sir.
Q. 1906?
A. Yes sir.
Q. Now, can you produce the monthly statement for December 31, 1912, also August 31, 1912, December 31, 1910, December 31, 1909, December 31, 1908, December 31, 1907, and December 31, 1906?
A. Yes sir.
Q. And December 31, 1905?
A. Yes sir.

(These statements were produced and put in evidence as Plaintiff's Exhibits 8 to 15, and read as follows:

EXHIBIT 13 OF PLAINTIFF.

Monthly Statement for the Year 1905.

Year Ending December 31, 1905.

Manufacturing Cost:		
Tools and Patterns	$7,133.40	
Experimental	5,198.27	
Material	47,197.75	
Factory Supplies	2,828.18	
Packing Crates	3,660.70	
Manufacturing Expense	1,625.70	
Direct Labor	50,036.30	
Indirect Labor	12,757.78	
Power, Heat & Light	2,934.55	
Total	133,363.63	
Less Cash Disct. on Purchases	841.78	
Net Cost of Scales made in U. S.		$132,521.85
Commercial Expense:		
Commission	156,455.95	
Selling Expense	14,118.01	
Training School	1,409.16	
Advertising	14,770.49	
Freight on Scales	3,856.64	
New York Office Expense	2,223.66	
Chicago Office Expense	3,845.70	
St. Louis Office Expense	1,880.20	

Monthly Statement for the Year 1905.—Continued.

San Francisco Office Expense		1,493.10	
Minneapolis Expense		161.99	
Pittsburg Expense		705.90	
Bond Interest		2,037.49	
Interest		1,807.51	
Insurance		691.04	
Rent		1,200.00	
Taxes		1,334.70	
Office Pay Roll		22,175.90	
Stationery & Office Supplies		3,360.66	
Postage		3,468.24	
Telephones & Telegraph		1,297.86	
Fidelity Bonds		72.50	
Collection & Exchange		909.05	
Cash Discount		8,042.16	
Legal Expense		1,259.27	
Repairs & Alterations		5,807.33	
Repairs (Scales)		194.12	
	Forward	254,578.63	
92	Commercial Expense (Brought Forward)	$254,578.63	
	General Expense	3,173.36	
Traveling Expense		2,842.79	
Litigation		3,989.81	
Patent Expense		1,142.44	
Kitchen Account		531.72	$266,258.75
Gross Sales			514,498.08

Deductions.		
Scales retd. (Less payts. on same)	21,941.45	
Canadian Scales	16,292.50	
Exchanged Scales	18,547.15	
Total		66,781.10
Net Sales In United States		447,716.98
Cost of Sales made in U. S.:		
Manufacturing Cost	132,521.85	
Commercial Expense	266,258.75	
Total Cost of Scales made in U. S.		398,780.60
		48,936.38
Scales Added to Stocks		12,943.19
Profit on Scales made in U. S.		61,879.57
Sales in Canada:		
Total Scales to Dean McLeod	16,292.50	
Cost of Scales from Gurney S. Co.	9,687.50	
Profit		6,605.00
Profit on all Scales Sold		68,484.57

Monthly Statement for the Year 1905.—Continued.

Assets:				
Patents		259,440.05	1,223.00	
Treasury Proof Stocks		89,000.00	.....	2,000.00
Organization		184,769.45	.....	
Real Estate & Bldgs.		25,315.88		
Machinery		16,917.14	4,504.12	
Tools & Patterns		16,133.51	3,032.38	
Plating Plant		865.95	.....	
Office Fixtures		5,223.60	1,371.25	
Agency Office Fixtures		480.50	79.75	
Kitchen & D. R. Eqpt.		534.28	534.28	
Horses & Wagons		1,202.65	.....	363.00
Sample Cases		6,086.59	405.93	
Material		27,488.91	15,229.56	
Factory Supplies		5,248.33	2,948.49	
Packing Crates		572.67	446.81	
Fuel		296.00	296.00	
Advertising Matter		1,218.32	394.92	
Stationery & Office Supplies		3,007.53	1,426.59	
Unexpired Insurance Premiums		318.78	17.74	
Scales Inventory:				
New Scales in Stock	12,445.00	.....	5,786.00	
Scales on Consignment	29,999.25	.....	8,950.57	
Scales in Stock for repairs	.....	.....	.....	2,082.00
Scales Leased to Customers	460.62	.....	288.62	
Total		42,914.87		

Exchange Scales of other makes		3,000.00		4,000.00
Accounts Receivable		35,365.16	11,858.51	
Bills Receivable		141,643.23	35,659.59	
Agents' Accounts Dr.		45,021.66	8,333.56	
		912,065.06	102,787.67	8,445.00
93 Liabilities:				
Capital Stock		600,000.00	.....	.....
Bonds		37,000.00	35,000.00	.....
Bills Payable		35,000.00	.....	25,000.00
Accrued Bond Interest		462.49	437.49	.....
Accrued Interest		.....	.....	83.85
Cash (Overdraft)		4,446.40	3,442.93	.....
Purchase Accts		18,081.63	7,240.64	.....
Guerney Scale Co.		1,186.65	1,014.38	.....
Prospective Commission		17,052.94	6,231.74	.....
Agents Accts Co.		6,646.41	.....	83.41
Undivided Profits to Jan. 1, 1905	126,045.79			
Deductions:				
Worthless Accts 6	1,249.82			
Descorded #3 S. Co.	1,092.00			
Total	2,341.82	.....	.....	2,341.82
Net Accumulations to Jan. 1/05	123,703.97			
Profits 1905	68,484.57			
		192,188.54		
		912,065.06	53,367.18	27,509.08

Monthly Statement for the Year 1905.—Continued.

Increase in Assets	102,787.67		
Decrease in Assets	8,445.00		
		94,342.67	
Increase in Liabilities	53,367.18		
Decrease in Liabilities	27,509.08		
		25,858.10	
Net Increase in Assets			68,484.57

94 EXHIBIT 14 OF PLAINTIFF.

Monthly Statement for the Year 1906.

Profit and Loss Statement.

Manufacturing Cost:	Twelve months ending December 31, 1906.	
Tools & patterns	5,195.13	
Experimental	8,138.91	
Material	34,706.39	
Factory Supplies	5,752.72	
Packing Crates	2,323.78	
Manufacturing Expense	740.93	
Direct Labor	45,479.71	
Indirect Labor	14,955.93	
Power Heat & Light	3,414.95	
Total		120,708.45
Less Discount on Purchases		891.32
		119,817.13

Commercial Expense:		
Commission	154,734.45	
Selling Expense	25,685.88	
Advertising	19,094.32	
Freight on Scales	3,949.71	
New York Office Expense	6,587.94	
Chicago Office Expense	4,903.10	
St. Louis Office Expense	723.89	
San Francisco Office Expense	1,743.33	
Minneapolis Office Expense	63.61	
Pittsburgh Office Expense	1,030.17	
Boston Office Expense	491.11	
Kansas City Office Expense	973.79	
Buffalo Office Expense	150.00	
Other Branch Offices Expense	1,322.71	
Bond Interest	3,600.01	
Interest	1,235.41	
Insurance	675.00	
Rent	1,200.00	
Taxes	1,816.46	
Office Pay Roll	32,505.77	
Stationery & Office Supplies	3,902.72	
Postage	4,005.36	
Telephone & Telegraph	1,293.85	
Fidelity Bonds	131.00	
Collection & Exchange	949.71	
Cash Discount	8,506.06	
Forward		281,275.36

Monthly Statement for the Year 1906.—Continued.

95

	Twelve months ending December 31, 1906.	
Commercial Expense (Brot Fwd)	281,275.36	
Legal Expense	2,328.03	
Repairs & Alterations	1,857.84	
Repairs	614.31	
General Expense	3,039.38	
Traveling Expense	4,545.80	
Litigation	5,444.58	
Patent Expense	2,520.97	
Kitchen Account	915.11	
		302,541.38
Gross Sales		536,292.75
Deductions:		
Scales returned less Pymts on same	39,075.24	
Canadian Sales	9,607.75	
Exchange Scales Allowances	18,554.45	
Total		67,237.44
Net Sales in United States		469,055.31
Manufacturing Cost	119,817.13	
Commercial Expense	302,541.38	
Total		422,358.51
		46,696.80

Decrease of Stock Sales		2,744.19
Profit on United States Sales		43,952.61
Scales in Canada:		
Sales to Dean & McLeod	9,607.75	
Cost of Scales from Gurney Co	5,657.50	
Profit on Canadian Sales		3,950.25
Total Profit for 1906		47,902.86

96 *Assets and Liabilities.*

Assets:	December 31, 1906.	Increase 1906.	Decrease 1906.
Patents	259,440.05	.....	.....
Treasury Preferred Stock	80,000.00	.....	9,000.00
Organization	184,769.45	.....	.....
Real Estate & Buildings	32,665.88	7,350.00	.....
Machinery	15,285.34	.....	1,631.80
Tools & Patterns	22,680.34	6,546.83	.....
Plating Plant	865.95	.....	.....
Office Fixtures	3,029.20	.....	2,194.40
Agency Office Fixtures	600.00	119.50	.....
Kitchen & Dining Room Eqment	581.88	47.60	.....
Horses & Wagons	795.00	.....	407.65
Sample Cases	6,137.75	51.16	.....
Equipment Factory (Electrical Fixtures, Shafting, Belting, Pulleys, Etc.)	4,376.69	4,376.69	.....

Monthly Statement for the Year 1906.—Continued.

Stock Inventory:	December 31, 1906.	Increase 1906.	Decrease 1906.
Material	43,440.59	15,951.68	.....
Factory Supplies	7,995.00	2,746.67	.....
Packing Crates	2,931.49	2,358.82	.....
Fuel	69.16	.....	226.84
Advertising Matter	1,463.91	245.59	.....
Stationery & Office Sup.	3,528.38	520.85	.....
Total	59,428.53		
Scales Inventory:			
New Scales in Stock	9,482.50	.....	2,972.50
Scales on Consignment	30,385.12	385.87	
Scales loaned Customers	303.06	.....	157.56
Total	40,170.68		
Premiums on Unexpired Insurance	959.84	641.06	.....
Exchange Scales of Other Makes	.....	.....	3,000.00
Accounts Receivable	43,295.60	7,930.44	.....
Bills Receivable	144,923.34	3,280.11	.....
Agents Accounts Dr.	59,264.46	14,242.80	.....
Cash	2,937.61	2,937.61	.....
	962,207.59	69,733.28	19,590.75

Liabilities:		December 31, 1906.	Increase, 1906.	Decrease, 1906.
Capital Stock		600,000.00	.....	.....
Bonds		67,000.00	30,000.00	10,000.00
Bills Payable		25,000.00	.....	.....
Accrued Bond Interest		837.50	375.01	.....
Bank Overdraft		.....	.....	4,446.40
Purchase Accounts		7,514.83	.....	10,566.80
Gurney Scale Co.		659.65	.....	527.00
Prospective Commission		20,126.27	3,073.33	.....
Agents' Accounts Cr.		8,113.46	1,467.05	.....
Undivided Profits up to January 1, 1906	192,188.54	.....	.....	.....
Less Worthless and Depreciated Accts.	7,135.52	.....	.....	7,135.52
	185,053.02	.....	.....	.....
Profit for 1906	47,902.86	.....	.....	.....
Total Profits up to Jan. 1/07		232,955.88	.....	.....
		962,207.59	34,915.39	32,675.72
Increase in Assets	69,733.28			
Decrease in Assets	19,590.75			
		50,142.53		
Increase in Liabilities	34,915.39			
Decrease in Liabilities	32,675.72			
		2,239.67		
Profit for 1906		47,902.86		

EXHIBIT 13 OF PLAINTIFF.

Monthly Statement for the Year 1907.

Report of Operations.

Manufacturing Cost:	Year ending December 31, 1907.
Tools & Patterns	11,456.10
Experimental	7,424.01
Material	66,290.87
Factory Supplies	7,062.65
Packing & Shipping	10,062.83
Manufacturing Expense	2,098.81
Direct Labor	62,225.76
Indirect Labor	2,497.05
Superintendent & Factory Office	6,165.25
Power Heat & Light	2,865.36
Maintenance, Repairs & Alterations	4,070.71
Second Hand Scales Expenses	225.25
Total	182,444.65
Less Discounts on Purchases	909.33
	181,535.32
Commercial Expense:	
Commission	194,757.15
Selling Expense	14,845.71
Agents' Supplies	374.39

Advertising	17,246.26
Freight on Scales	5,232.91
New York Office Expense	9,031.05
Chicago Office Expense	6,054.99
San Francisco Office Expense	1,918.11
Pittsburgh Office Expense	414.55
St. Louis Office Expense	3,546.52
Boston Office Expense	1,037.75
Kansas City Office Expense	372.89
Buffalo Office Expense	277.50
Philadelphia Office Expense	309.53
Other Branch Office Expense	684.48
Bond Interest	5,087.51
Interest	629.32
Insurance	1,200.00
Rent	1,200.00
Taxes	1,653.62
Office Pay Roll	35,728.02
Stationary & Office Supplies	5,198.41
Postage	4,086.99
Telephone & Telegraph	1,359.86
	312,247.52

		Year ending December 31, 1907.
Commercial Expense (Brot. Fwd.)	.....	312,247.52
Fidelity Bonds	.....	189.75
Collection & Exchange	.....	908.48
Cash Discount	.....	10,606.85
Legal Expense	.....	2,373.06
Repairs on Scales	Cr.	160.29
General Expense	.....	1,484.09
Litigation	.....	10,032.14
Traveling Expense	.....	3,110.23
Patent Expense	.....	4,141.74
Kitchen	.....	1,340.41
		346,273.98
Gross Sales	.....	616,164.80
New Scales Sold	615,314.80	.....
Second Hand Scales Sold	850.00	.....
Deductions:		
Scales returned less payments on same	43,003.46	.....
Canadian Sales	3,632.50	.....
Exchange Scales Allowances	24,737.50	.....
Total	.....	71,373.46
Net Sales in United States	.....	544,791.34

Manufacturing Cost	181,535.32	.....
Commercial Expense	346,273.98	.....
Total	.....	527,809.30
		16,982.04
Stock Scales Increase	.....	30,196.12
Profit on United States Sales	.....	47,178.16
Deductions for Depreciations:		
Machinery	1,528.34	.....
Office Fixtures	302.90	.....
Agency Office Fixtures	60.00	.....
Sample Cases	306.88	.....
Horses & Wagons	258.99	.....
		2,457.11
		44,721.05
Scales in Canada:		
Sales to Dean & McLeod	3,632.50	.....
Cost from Gurney Scale Co.	2,399.35	.....
Profit	.....	1,233.15
Net Profit for 1907	.....	45,954.20

Monthly Statement for the Year 1907.—Continued.

100

Assets and Liabilities.

Assets:	December 31, 1907.	Year 1907. Increase.	Year 1907. Decrease.
Patents	259,440.05	.....	.....
Treasury Preferred Stock	69,700.00	.....	10,300.00
Organization	192,769.45	8,000.00	.....
Real Estate & Buildings	33,115.88	450.00	.....
Machinery	16,180.40	895.06	.....
Tools & Patterns	24,636.45	1,956.11	.....
Plating Plant	865.95	.....	.....
Office Fixtures	3,392.97	363.77	.....
Agency Office Fixtures	1,213.22	613.22	.....
Kitchen & Dining Room Eqmt.	700.00	118.12	.....
Horses & Wagons	490.00	.....	305.00
Sample Cases	7,636.30	1,498.55	.....
Factory Equipment	5,239.10	862.41	.....
Stock Inventory:			
Material	64,669.37	.....	21,228.78	.....
Factory Supplies	14,889.70	.....	6,894.70	.....
Packing Crates	1,930.01	.....	.....	1,001.48
Fuel	164.50	.....	95.34	.....
Advertising Matter	2,513.58	.....	1,049.67	.....
Stationary & Office Sup.	2,294.65	.....	.....	1,233.73
Total	86,461.81	.....	.....

Premiums on Unexpired Insurance		1,064.06	104.22	.....
Scales Inventory:				
New Scales in Stock	16,336.25	.....	6,853.75	.....
Scales on Consignment	53,101.87	.....	22,716.75	.....
Scales loaned Customers	463.43	.....	160.37	.....
Second Hand Scales	465.25	.....	465.25	.....
Total		70,366.80	.....	.....
Accounts Receivable		46,537.33	3,241.73	.....
Bills Receivable		158,358.61	13,445.27	.....
Agents' Accounts Dr.		65,946.17	6,681.71	.....
Cash		1,705.21	.....	1,232.40
		1,045,829.76	97,694.78	14,072.61
101 Liabilities:				
Capital Stock		600,000.00	.....	.....
Bonds		100,000.00	33,000.00	.....
Bills Payable		5,000.00	.....	20,000.00
Accrued Bond Interest		1,250.01	412.51	.....
Purchase Accounts		19,578.78	12,063.95	.....
Gurney Scale Co.		722.32	62.67	.....
Prospective Commission		24,013.36	3,887.09	.....
Agents' Accounts Cr.		14,650.15	6,536.69	.....
Other Accounts Payable		4,346.32	4,346.32	.....

Monthly Statement for the Year 1907.—Continued.

		December 31, 1907.	Year 1907. Increase.	Year 1907. Decrease.
Undivided Profits up to January 1, 1907	232,955.88			
Less Worthless Accounts	2,641.26			
		230,314.62	.....	.....
Net Profit for 1907		45,954.20	.....	.....
		1,045,829.76	60,309.23	22,641.26
Increase in Assets			97,694.78	
Decrease in Assets			14,072.61	
				83,622.17
Increase in Liabilities			60,309.23	
Decrease in Liabilities			22,641.26	
				37,667.97
Profit for 1907				45,954.20

102 EXHIBIT 12 OF PLAINTIFF.

Monthly Statement for the Year 1908.

Operations.

Manufacturing Cost:	Year ending December 31, 1908.
Experimental	9,525.48
Tools & Patterns	4,767.98
Material	71,850.68
Factory Supplies	13,979.29
Packing & Shipping	10,692.93
Manufacturing Expense	2,885.17
Superintendent & Factory Office	7,460.00
Direct Labor	76,663.95
Indirect Labor	2,657.99
Maintenance Repairs & Alterations	4,443.97
Power Heat & Light	3,104.78
Total	208,032.22
Less Discounts on Purchases	407.30
	207,624.92
Commercial Expense:	
Commission	333,080.41
Selling Expense	28,175.18
Advertising	15,048.45
Freight on Scales	6,543.96
Repairs on Scales	1,013.57
New York Office Expense	14,504.67
Chicago Office Expense	8,080.41
San Francisco Office Expense	4,225.65
St. Louis Office Expense	2,892.37
Boston Office Expense	7,605.44
Philadelphia Office Expense	2,090.85
Minneapolis Office Expense	494.64
Other Branch Office Expenses	4,017.00
District Agents' Expense	8,089.85
Bond Interest	4,999.99
Interest	4,671.86
Insurance	1,500.00
Rent	1,200.00
Taxes	1,997.40
Office Payroll	39,614.93
Stationery & Office Supplies	3,194.43
Postage	4,049.68
Telephone & Telegraph	1,864.09
Fidelity Bonds	167.00
	499,121.83

103 Commercial Expense Brot. Fwd		499,121.83
Collection & Exchange		1,784.73
Cash Discount		12,830.24
Legal Expense		2,896.58
General Expense		1,836.93
Litigation		3,944.02
Patent Expense		5,135.19
Kitchen		1,165.51
Travelling Expense		2,286.90
		531,001.93
Gross Sales		940,627.91
New Scales Sold	903,718.31	
Second Hand Scales Sold	21,647.10	
Canadian Scales Sold	15,262.50	
Deductions:		
Scales returned less payments on same	57,640.42	
Exchange Scale Allowances	82,905.26	
		140,545.68
		800,082.23
Manufacturing Cost	207,624.92	
Commercial Expense	531,001.93	
Canadian Scales Purchases	3,784.50	
Canadian Business Expense	5,160.33	
Depreciation—Machinery Appraisal	2,058.47	
		749,630.15
Profit on Sales		50,452.08
Increase in Scales in Stock		24,704.75
Profit for 1908		75,156.83

104 *Assets and Liabilities.*

Assets:	December 31, 1908.
Patents	259,440.05
Treasury Preferred Stock	69,700.00
Real Estate & Buildings	33,115.88
Organization	192,769.45
Machinery	12,437.95
Tools & Patterns	40,716.62
Furniture & Fixtures (Office & Dining Room)	4,891.05
Agency Office Fixtures	2,914.53
Kitchen Equipment	222.68
Sample Cases	9,125.07
Horses & Wagons	460.57
Factory Equipment	8,496.14

		December 31, 1908.
Stock Inventory:		
Material	67,172.80	
Packing Crates	3,880.97	
Factory Supplies	8,961.14	
Fuel	255.00	
Advertising Matter	2,263.36	
Stationery & Office Supplies	4,046.79	
		86,580.06
Premiums in Unexpired Insurance		628.09
Scales Inventory:		
New Scales in Stock	11,063.75	
Scales in Consignment	82,513.62	
Scales loaned Customers	812.93	
Second Hand Scales	681.25	
Total		95,071.55
Accounts Receivable		64,270.67
Bills Receivable		278,187.50
Agents' Accounts Dr.		126,534.70
Cash		20,284.12
		1,305,846.68
Liabilities:		
Caital Stock		600,000.00
Bonds		100,000.00
Bills Payable		150,000.00
Accrued Bond Interest		1,250.00
Purchase Accounts		33,860.64
Other Accounts Payable		3,220.03
Prospective Commission		42,395.46
Agents' Accounts Cr.		26,266.12
Undivided Profits up to January 1, 1908.	276,268.82	
Less Worthless Accounts	2,571.22	
		273,697.60
Profit for 1908		75,156.83
		1,305,846.68

105 EXHIBIT 11 OF PLAINTIFF.

Monthly Statement for the Year 1909.

Report of Operations.

Manufacturing Cost:	Twelve months ending December 31, 1909.	Dec., 1909.	Average for 12 months.
Experimental	11,992.14	1,177.03	999.34
Tools & Patterns	12,720.91	1,947.23	1,060.08
Material	94,001.06	8,674.60	7,833.42
Factory Supplies	20,460.92	1,408.78	1,705.08
Packing & Shipping	15,615.44	1,719.04	1,301.28
Manufacturing Expense	3,044.94	200.05	253.75
Supt. & Factory Office Exp	8,063.91	786.75	671.99
Direct Labor	118,202.91	14,190.42	9,850.24
Indirect Labor	3,704.46	416.29	308.70
Maintenance Repairs & Alter	7,087.55	2,059.52	590.63
Power Heat & Light	4,442.55	503.04	370.22
Horse & Wagon Acct	357.59	12.00	29.80
Lumber	1,430.40	284.15	119.20
Total	301,124.78	33,378.90	25,093.73
Less Discount on Purchases	425.33	152.57	350.04
	300,699.45	33,226.33	25,058.29

Commercial Expense:			
Commission U. S.	420,013.02	37,358.05	35,001.09
Advertising	19,773.41	317.30	1,647.78
Selling Expense	18,307.88	3,354.54	1,525.66
Dist. Managers' Salaries	5,680.00	.....	473.33
Special Salesmens' Salaries	2,755.00	850.00	229.58
Dist. Managers' Expenses	8,302.74	586.01	691.90
Special Salesmens' Expenses	1,610.27	275.93	134.19
New York Office	15,538.37	1,402.83	1,294.86
Chicago Office	9,574.62	804.35	797.89
San Francisco Office	3,192.40	.....	266.03
Boston	9,621.28	766.55	801.77
St. Louis	5,861.01	576.83	488.42
Philadelphia	1,595.87	120.00	132.99
Minneapolis	3,195.69	75.00	266.31
Other Branch Offices	9,322.98	1,291.25	776.91
Freight on Scales	7,891.70	611.24	657.64
Bond Interest	4,187.48	145.83	348.96
Preferred Stock	11,338.50	1,476.50	944.87
Interest	12,962.78	1,495.84	1,080.23
Insurance	1,650.00	150.00	137.50
Rent	1,282.50	112.50	106.88
Taxes	2,257.75	471.43	188.15
Office Pay Roll	68,051.17	6,880.06	5,670.93
Stationery, Office Supplies	7,581.89	669.37	631.82
	651,548.31	59,791.41	54,295.69

		Twelve months ending December 31, 1909.		Dec., 1909.		Average for 12 months.
Commercial Expense (Fwd.)		651,548.31		59,791.41		54,295.69
Postage		6,315.37		605.07		526.36
Telephone & Telegraph		2,748.63		226.41		229.05
Fidelity Bonds		416.62		143.98		34.72
Collection & Exchange		3,531.48		578.86		294.29
Cash Discount		17,287.48		1,517.76		1,440.62
Legal Expense		8,540.60		402.65		711.72
Quantity Discount		9,199.61		308.30		766.63
Gerneral Expense		3,909.18		459.99		325.77
Travelling Expense		13,050.09		1,967.93		1,087.51
Litigation		2,957.52		350.00		246.46
Patent		6,631.05		1,510.57		552.59
Recording of Orders		634.03		66.22		52.84
Kitchen		904.58		116.46		75.38
		727,675.55		68,045.61		60,639.63
Gross Sales:						
New Scales in U. S.	1,187,532.15		109,575.15		98,961.01	
Second Hand Scales in U. S.	48,345.70		3,022.00		4,028.81	
Canadian Sales	77,667.41		7,901.50		6,472.29	
Foreign Sales	33,413.59		2,189.34		2,784.47	
Total		1,346,958.85		123,687.99		112,246.58

Deductions:						
Allowance Toledo Scales	13,720.71		65.00		1,143.39	
Toledo Scales Chgd. Back	81,264.99		4,589.75		6,772.08	
Canadian Sales	77,667.41		7,901.50		6,472.28	
Exchange Scales Allowances	69,058.52		4,573.26		5,754.88	
Total		241,711.63		17,129.51		20,142.63
Net U. S. Sales		1,105,247.22		106,558.48		92,103.95
Manufacturing Cost (U. S.)	300,699.45		33,226.33		25,058.29	
Commercial Cost (U. S.)	727,675.55		68,045.61		60,639.63	
Total		1,028,375.00		101,272.94		85,697.92
		76,872.22		5,286.54		6,406.03
Increase in U. S. Stock Scales		45,863.91		29,681.82		3,821.99
		122,736.13		34,968.36		10,228.02
Loss Repair Account		947.23		161.67		78.94
		121,788.90		34,806.69		10,149.08
Profit Canadian Business		15,754.42		2,282.91		1,312.87
		137,543.32		32,532.78		11,461.95

Assets:		Dec. 31, 1909.	December, 1909. Increase.	December, 1909. Decrease.	12 months. Increase.	12 months. Decrease.
Patents		259,440.05				
Real Estate & Bldgs		39,430.72	3,209.49		6,314.84	
Machinery		17,645.68	1,176.58		5,207.73	
Tools & Patterns		45,876.91			5,160.29	
Office Fixtures		7,177.83	486.00		2,286.78	
Agency Office Fixtures		4,731.92	119.05		1,817.39	
Kitchen Equipment		222.68				
Horses & Wagons		515.00	75.00		54.43	
Sample Cases		10,383.05		6.50	1,257.98	
Factory Equipment		13,896.12	1,135.55		5,299.98	
Material		77,670.09			10,497.29	
Factory Supplies		6,107.64				2,853.50
Packing Crates		2,191.58				1,689.39
Fuel		50.00				205.00
Advertising Matter		1,433.05				830.31
Stationery & Office Supplies		3,739.21				307.58
Unexpired Insurance		1,281.03	480.65		652.94	
Scales Inventory 33⅓%						
Finished Scales in Stock	9,011.66		3,660.00			5,740.00
U. S. Consgt. Scales	155,476.08		25,485.00		50,001.58	
Canadian Consgt. Scales	27,085.00		257.50		22,541.34	553.17
Second Hd. Scales	355.16		115.16			
Scales Loaned Customers	3,239.41		421.66		2,155.50	
Totals		195,167.31				

Bills Receivable	423,723.04	9,490.91		145,535.54	
Agents Accts. Dr. Bal	97,871.07		19,683.59		28,663.63
Cash			2,008.54		20,284.12
Accts. Receivable	101,678.91	207.62		37,408.24	
Canadian Factory	701.02	701.02		701.02	
	1,310,933.91	47,021.15	21,698.63	296,892.87	61,126.70

Report of Operation.

Canadian Business:	12 mos., Dec. 31, 1909.		December, 1909.		Average 12 months.	
Gross Sales		77,667.41		7,901.50		6,472.28
Deductions:						
Allowances on Toledo Scales..	3,032.28		604.00		252.69	
Exchange Sacle Allowances...	1,140.70		21.05		95.06	
		4,172.98		582.95		347.75
Net Canadian Sales		73,494.43		7,318.55		6,124.53
Scales Purchased from Clea....	141,013.33		5,295.26		3,417.78	
Commission	31,190.94		2,988.38		2,599.25	
General Expense	8,077.08		1,575.32		673.09	
		80,281.35		9,858.96		6,690.11
		6,786.92		2,540.41		565.58
Increase in Consignment Stock		22,541.34		257.50		1,878.45
Profit on Canadian Business		15,754.42		2,282.91		1,312.87

	12 mos., Dec. 31, 1909.	December, 1909.	Average 12 months.	
Net U. S. Sales			89,604.10	
Purchase of Material		7,639.93		
Labor		8,922.85		
Flat Cost		16,562.78		
Overhead Fcty. Exp		5,974.02		
Factory Cost		22,536.80		
Increase in Stock Scales		1,692.26		
Cost of Sales—Sold			20,844.54	
Gross Profit on U. S.			68,759.56	
Commercial Cost			57,826.56	
Net Profit			10,933.00	
Loss on Repair Acct			25.37	
Net Profit on U. S. Business				10,907.63
Net Canadian Sales			7,652.50	
Scales Purchased		3,406.50		
Increase in Stock		442.16		
Cost of Sales		2,964.34	2,964.34	
Gross Profit			4,688.16	
Commercial Expenses			3,396.85	
Net Profit				1,291.31
Total Net Profit				12,198.94
Less Dividends				1,151.50

Assets and Liabilities December, 1909.

Liabilities:		Increase.	Decrease.	Increase.	Decrease.
Capital Stock Issued	595,300.00			65,000.00	
Bonds	35,000.00				65,000.00
Bills Payable	300,000.00	25,000.00		150,000.00	
Accrued Bond Interest	437.49	145.83			812.51
Preferred Stock Dividend	4,429.50	1,476.50		4,429.50	
Purchase Accts	46,416.45	1,685.71		12,555.81	
Other Accts. Payable	8,270.83		1,175.75	5,050.80	
Prospective Commission	65,915.30	7,148.11		23,419.84	
Agts. Accts. Cr. Bal	25,697.73		4,440.05		568.39
Bank Overdraft	844.19	844.19		844.19	
Accumulated Profits	91,079.10		37,885.80		96,696.39
Profits for 1909	137,543.32				
	1,310,933.91	36,300.34	43,501.60	261,300.14	163,077.29
Increase in Assets		47,021.15		296,892.87	
Decrease in Assets		21,698.63		61,126.70	
			25,322.52		235,766.17
Decrease in Liabilities		43,501.60		163,077.29	
Increase in Liabilities		36,300.34		261,300.14	
			7,201.26		98,222.85
			32,523.78		137,543.32

EXHIBIT 10 OF PLAINTIFF.

Monthly Statement for the Year 1910.

Monthly Statement, December, 1910, Sales.

U. S. & Foreign Sales:	12 months, Dec. 31, 1910.		December only.	
New Scales Sold	1,286,263.68		134,888.29	
Second Hd. Scales Sold	53,879.97		2,676.00	
Foreign Sales	26,720.21			
Rebuilt Sales	38,227.82		4,629.00	
Total		1,405,091.68		142,193.29
Deductions:				
Toledo Scales charged back	97,653.60		16,024.69	
Exchanged Scale Allowances	90,502.22		9,205.09	
Toledo Scale Allowances	10,857.65		1,951.25	
Total		199,013.47		27,181.03
Net U. S. & Foreign Sales		1,206,078.21		115,012.26
Mfg. Cost		338,053.66		29,486.31
Gross Gains		868,024.55		85,525.95
Commercial & Selling Costs		798,371.52		77,762.78
Net Gain U. S. & Foreign		69,653.03		7,763.17
Royalties	34.33			
Misc. Gains	21.84	56.17		
		69,709.20		7,763.17

Canadian Business Gains		20,880.10		3,426.18
Net Sales Gain		90,589.30		11,189.35
U. S. Stock Increase	3,432.52		10,223.28	
	18,758.37			
Canadian Stock Increase	322.82		599.69	
Total Stock Increase		22,513.71		10,822.97
Net Gain Sales & Stock		113,103.01		366.38
Vulcanizer Sales	1,071.48		665.43	
Vulcanizer Expenses	2,469.02		1,194.65	
Net Loss Vulcanizer Dept		1,397.54		529.22
Final Net Gains		111,705.47		162.84

110 *Profit and Loss Statement for* 12 *Months Ending December* 31, 1910.

Sales United States:			
New Scales		1,286,263.68	
Second Hand Scales		92,107.70	
Misc. Foreign Sales		27,791.69	
Total Sales			1,406,163.16
Less returns & allowances			199,013.47
Net Sales			1,207,149.69

Profit and Loss Statement for 12 *Months Ending December* 31, 1910.—Continued.

Cost of Sales:			
Material & Labor	185,443.35		
Mfg. Expenses	132,860.08		
Cost of Mdse. Sold	.....	318,303.43	
Gross Profit on Sales	.....	888,846.26	
Commercial Expenses	.....	775,099.49	
Net Profit U. S. Sales	.....	.....	113,746.77
Sales Canada:			
Gross Sales	117,386.59		
Less Returns & Allowances	9,474.67		
Net Sales	.....	107,911.92	
Cost of Mdse. Sold	.....	35,701.88	
Gross Profit Canadian Sales	.....	72,210.04	
Commercial Expenses	.....	52,106.40	
Net Profit Canadian Sales	.....	.....	20,103.64
Total Profit from Operations	.....	.....	133,850.41

Other Expenses:			
Interest on Bonds		1,749.96	
Other Interests		22,379.46	
			24,129.42
Net Profits for year 1910			109,720.99

Statement of Assets & Liabilities as of December 31, 1910.

Liabilities:			
Bonds		35,000.00	
Accrued Interest on Bonds		437.45	
Note Payable		445,000.00	
Accounts Payable:			
Purchase Creditors	44,368.04		
Sundry Creditors	5,664.19		
Agents Credit Bals.	39,577.84		
Agents Prospective Com.	58,048.18		
		147,658.25	
Accrued Taxes		25.98	
Accrued Wages		2,192.54	
Accrued Dividends on Pfd. Stock		5,245.37	
			635,559.59
Capital Stock Preferred	600,000.00		
Less unsold stock	286,700.00		
		313,300.00	
Capital Stock Common		300,000.00	
Total Paid up Stock		613,300.00	

Statement of Assets & Liabilities as of December 31, 1910.—Continued.

Surplus	.....	195,717.67	
Gains for Year 1910	.....	109,720.99	
Total Capital Stock & Surplus	.....	.....	918,738.66
Total Liabilities	.....	.....	1,554,298.25

111 *Monthly Statement for December, 1910, Liabilities.*

Liabilities:	12 months	Dec. 31, 1910, increase.	December decrease.	12 months increase.	Decrease.
Common Stock issued	300,000.00	.....	.....	.....	.....
Preferred Stock issued	313,300.00	6,000.00	.....	18,000.00	.....
Bonds	35,000.00	.....	.....	.....	.....
Bills Payable	445,000.00	50,000.00	.....	145,000.00	.....
Purchase Accounts	44,368.04	401.84	.....	.....	2,048.41
Misc. Accts. Payable	5,664.19	.....	643.27	.....	2,606.64
Agents' Credit Balances	39,577.84	1,247.26	.....	13,880.11	.....
Agents' Prospective Commission	58,048.18	1,142.40	.....	.....	7,867.12
Accrued Bond Interest	437.45	145.83	.....	.....	.04
Accrued Pfd. Stock Dividends	5,245.37	1,808.53	.....	815.87	.....
Accrued Wages	1,732.77	.....	1,151.85	.....	1,074.30
Accrued Taxes	25.98	.....	504.08	.....	595.27
Adjustment Accounts	3,700.55	.....	.....	.....	.....
Surplus	192,017.12	.....	1,717.68	.....	24,500.97
Gains to Dec. 31/10	111,705.47	.....	.....	.....	.....
	1,556,282.73	60,745.86	4,016.88	177,695.98	38,692.75

Increase in Assets	67,703.86	.....	297,913.55	.....	
Decrease in Assets	11,137.72	.....	47,204.85	.....	
		56,566.14		250,708.70	
Increase in Liabilities	60,745.86	.....	177,695.98	.....	
Decrease in Liabilities	4,016.88	.....	38,692.75	.....	
		56,728.98		139,003.23	
		162.84	.....	111,705.47	

112 *Monthly Statement for December, 1910, Assets.*

Assets:	12 months.	Dec. 31, 10.	December, 1910. Increase.	December, 1910. Decrease.	12 months. Increase.	12 months. Decrease.
Cash	.....	43,979.18	37,687.83	.....	44,823.37	.....
Bills Receivable	586,317.10					
Less Reserve	12,148.70	574,168.40	16,134.70	.....	158,788.49	.....
Accounts Receivable	61,713.69					
Less Reserve	4,136.73	57,576.96	4,734.70	.....	.....	39,329.35
Mdse.:						
Consgt. Scales U. S. 33 1/3 & 25%	167,258.26					
Consgt. Scales Can. 33 1/3	23,191.93					
Factory Scales U. S. 33 1/3	18,025.62					
Factory Scales Can. 33 1/3	4,215.89					
Rebuilt Scales 33 1/3	3,896.25					
Loaners Scales 33 1/3	2,991.40					
Consgt. Scales S. Am. 33 1/3	350.00					
		219,929.35	.....	10,822.97	22,513.71	.....

Monthly Statement for December, 1910, Assets.—Continued.

	12 months.	Dec. 31, 10.	December, 1910. Increase.	December, 1910. Decrease.	12 months. Increase.	12 months. Decrease.
Vulcanizers 25% list	.....	468.00	468.00	.....	468.00	.....
Material	83,205.34	.....	.....	.....	1,416.66	.....
Supplies	12,732.99	98,416.00	.....	109.41	.....	3,505.81
Agents' Supplies 33 1/3%	2,477.67	.....	.....	.....	2,477.67	.....
Agents' Debit Balances	112,615.55					
Less Reserve	4,202.11					
		108,413.44	5,923.94	.....	22,444.30	.....
Plant Account:						
Real Estate & Buildings	39,908.35	.....	.....	.....	477.63	.....
Machinery	21,076.89	.....	.....	47.97	4,597.74	.....
Tools & Patterns	51,242.38	.....	.....	.....	.....	4,369.69
Factory Equipment	21,170.85	.....	347.02	.....	4,565.75	.....
Office & Factory Furniture	10,032.26	.....	15.00	.....	2,276.46	.....
Agency Office Fixtures	7,263.06	.....	26.04	.....	2,531.14	.....
Sample Cases	12,191.62	.....	.....	4.95	2,680.37	.....
Horses & Wagons	1,685.75	.....	.....	15.00	1,265.00	.....
Kitchen Equipment	235.68	.....	.....	.....	5.50	.....
		164,806.84	.....	.....	.....	.....
Canadian Equipment	4,616.43					
Machinery	929.91	.....	488.91	.....	.....	.....
Sample Cases	280.50	.....	240.00	.....	.....	.....
Tools & Patterns	6,674.99	.....	423.35	.....	.....	.....
Fixtures	324.15					
Materials	11,199.03					

Supplies	1,150.37					
		25,175.38	.....	.....	24,474.36	.....
		260,580.05	450.00	.....	1,140.00	.....
Patents	.....	.....	764.37	.....	581.36	.....
Ins. Premiums	1,862.39					
Corp. Taxes	906.74					
		2,769.13	.....	137.42	386.04	.....
		1,556,282.73	67,703.86	11,137.72	297,913.56	47,204.85

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Monthly Statement for December, 1910, Factory.

	12 months, Dec. 31, 1910.		December only.	
Mfg. Expenses:				
Direct Labor	96,442.27		7,749.63	
Indirect Labor	31,136.16		2,833.41	
Material	103,916.05		7,361.54	
Total	.....	231,494.48	.....	17,944.58
Factory Supplies	16,360.16		1,007.95	
Experimental	13,042.30		1,490.15	
Tools & Patterns	18,752.66		1,570.28	
Packing & Shipping	16,166.21		1,959.13	
Lumber	3,160.30		327.20	
Horse & Wagon Expense	517.97		320.59	
Trucking	1,380.95		155.25	
Maintenance Rep. & Attns	6,766.85		908.04	
Power, Heat & Light	5,300.48		893.10	
Supt. & Factory Office	10,636.47		1,043.75	
Misc.	3,901.09		399.88	
Rebuild Dept.	10,573.74		1,466.41	
Total	.....	106,559.18	.....	11,541.73
Grand Total	.....	338,053.66	.....	29,486.31

Selling Expenses:	12 months, Dec. 31, 1910.		December only.	
Agents Commissions	384,210.55		35,409.01	
Dist. Magrs. Commissions	26,057.07		334.58	
		410,267.62		35,743.59
Dist. Magrs. Salaries		39,323.37		3,913.34
H. F. Anderson Expense	413.57		33.43	
F. H. Goodby	752.32		116.83	
S. M. Harrington	1,135.47		59.95	
L. B. Miller	1,938.54			
J. L. Whitbeck	546.58			
W. H. Roberts	1,921.15		221.65	
W. H. Ashton	430.57			
H. A. Massie	291.07			
W. W. Graham	1,411.36		249.38	
J. O. Marten	522.27			
L. S. Miller	1,311.18		167.36	
B. O. Lawrence	359.33			
C. J. Derbes	815.00			
F. L. Ditzler	194.85		15.65	
J. L. Theobald	173.07			
O. E. Schupp	71.55		49.60	
		12,287.88		913.85
Spec. Salesmen's Salaries		7,552.16		425.00
Spec. Salesmen's Expenses		3,426.89		23.95
New York Office Expenses	13,502.12		1,463.67	
Chicago	9,130.16		994.92	
Boston	8,893.58		919.24	

St. Louis		5,417.24		503.50	
Philadelphia	65.00	3,436.55		317.32	
Dayton	40.00	1,702.15		76.19	
Detroit	70.00	1,206.64		126.00	
Omaha	42.50	1,994.87		322.26	
Minneapolis	75.00	2,939.31		350.60	
Cleveland	60.00	1,944.54		199.73	
Los Angeles	.....	371.09		.....	
Denver	65.00	560.29		65.00	
Seattle	86.50	1,633.37		274.30	
Kansas City	95.00	6,265.20		643.25	
Milwaukee	25.00	397.31		25.00	
Buffalo	75.00	2,405.70		365.01	
Pittsburg	97.91	3,278.06		444.96	
Indianapolis	45.00	1,272.87		126.86	
Forward		66,351.05	472,857.92	7,217.81	41,019.73
115					
Forward		.....	472,857.92	.....	41,019.73
Branch Offices forward		66,351.05		7,217.81	
Cincinnati		2,406.93		326.43	
New Orleans		3,490.99		327.52	
San Francisco		10,509.27		2,596.23	
Atlanta		399.66		.....	
			83,157.90		10,467.99
Avertising		.....	26,521.59	.....	2,744.73
Travelling		.....	6,183.81	.....	344.71
Prize Contest		4,023.22		578.86	
Toledo System		2,436.60		96.00	

Monthly Statement December, 1910, Selling.—Continued.

	12 months, Dec. 31, 1910.		December only.	
Hotel Expense	1,752.76		208.10	
Visiting Salesmen's Exp.	1,809.26		60.90	
Agents' Supplies	2,449.49		87.07	
Misc. Selling	9,689.85		772.55	
Dist. Mgrs. Convention	145.25		145.25	
		22,306.43		1,948.73
Grand Total		611,027.65		56,525.89
Commercial		187,343.87		21,236.89
Grand Total		798,371.52		77,762.78

Monthly Statement for December, 1910, Commercial.

Commercial Expenses:	12 mos., Dec. 31, 10.	December only.
Bond Interest	1,749.96	145.83
Cash Discount	16,970.07	1,614.41
Collection & Exchange	5,930.37	533.25
Fidelity Bonds	475.37	316.00
Freight Outbound	13,895.19	1,044.89
Freight Inbound	2,812.17	270.08
Insurance	2,400.00	200.00
Interest	22,379.46	1,984.50
Kitchen	851.47	182.75
Legal Expense	8,580.30	2,589.33

Monthly Statement for December, 1910, *Commercial.*—Continued.

	12 mos., Dec. 31, 10.		December only.	
Litigation	3,072.51		250.00	
Office Payroll	67,609.14		6,767.83	
Office Supplies	6,281.37		379.65	
Patent Expenses	9,940.14		1,123.62	
Postage	6,417.32		497.42	
Quantity Discount	5,369.14		1,348.50	
Recording Orders	1,350.85		160.00	
Rent	1,247.50		100.00	
		177,342.33		
Repairs	627.72	176,714.61	271.20	
Taxes	3,734.88		223.78	
Telephone & Telegraph	2,846.52		291.24	
General Expense	4,047.86		484.54	
Total		187,343.87		21,236.89

EXHIBIT 8 OF PLAINTIFF.

Monthly Statement for the Year 1911.

Monthly Statement for December, 1911.

	12 months, Dec. 31, 1911.		December. Increase.	December. Decrease.	12 months. Increase.	12 months. Decrease.
Cash		31,309.21		7,747.78		12,669.97
Bills Receivable	570,530.39					
Reserve	3,302.85		11,031.36			6,940.86
		567,227.54				
Accounts Receivable	54,366.70					
Reserve	2,447.67			844.53		5,657.93
		51,919.03				
Mdse.:						
Consgt. Scales U. S. 33 1/3..	128,386.44		3,442.52			38,871.82
Consgt. Scales Comp. 33 1/3.	19,467.98			901.77	19,467.98	
Factory Scales U. S. 33 1/3..	11,490.00			2,051.66		6,535.62
Factory Scales Comp. 33 1/3.	3,383.33			525.00	3,383.33	
Consgt. Scales S. AM. 33 1/3	412.75		23.33		62.75	
Refinished Scales U. S. 33 1/3	6,463.33		238.33		2,567.08	
Loaners	1,308.92		130.84			1,682.48
Consgt. Scales Can	31,425.53		1,556.50		8,233.60	
Consgt. Scales Comp	2,078.33			174.33	2,078.33	
Factory Scales Can	5,854.17			150.00	1,638.28	
		210,270.78				
Vulcars	3,756.25			296.87	3,288.25	

Agents' Supplies	1,996.23		25.06			481.44	
		5,752.48					
Material	80,252.13				5,644.85		
Supplies	18,155.85				1,428.49		
		98,407.98					
Agents' Debit Balances.....	147,247.10						
Reserve	22,687.09		4,031.93		16,146.57		
		124,560.01					
Real Estate & Buildings.....	40,326.57				418.22		
Machinery	22,559.38			110.07	767.24		
Tools and Patterns.....	53,484.41				2,335.32		
Factory Equip. & Chart S.:							
Stones	26,232.73		574.11		4,626.26		
Office and Fcty. Furniture...	12,816.80		538.75		3,104.95		
Agency Office Fixtures.....	8,283.84		6.31		1,020.78		
Sample Case	14,773.25		266.25		2,301.13		
Horses and Wagons.....	1,340.00					345.75	
Kitchen Equipment	217.60				8.61		
Auto. Truck	2,024.00				2,024.00		
		182,058.58					
Windsor Plant:							
Material	10,558.36				5,047.63		
Supplies	2,734.48				792.93		
Tools & Patterns.....	7,684.31					3,180.05	
Factory Equipment	4,489.77		176.13			413.46	
Machinery	4,544.00		110.07		1,366.15		
Furniture & Fixtures.....	1,256.44		69.90		850.55		
		31,267.36					

Monthly Statement for December, 1911.—Continued.

	12 months, Dec. 31, 1911.		December. Increase.	December. Decrease.	12 months. Increase.	12 months. Decrease.
Prepaid Insurance	2,610.77		648.00		748.38	
Prepaid Taxes	463.33			147.55		443.41
		3,074.10				
Patents		250,000.00				10,580.05
		1,555,847.07	22,869.39	12,949.56	89,351.66	87,802.84

117 *Monthly Statement for December,* 1911.

Liabilities:	12 mos., Dec. 30, 11.	December. Increase.	December. Decrease.	12 months. Increase.	12 months. Decrease.
Common Stock Issued	300,000.00				
Preferred Stock Issued	316,200.00	1,100.00		2,900.00	
Bonds	3,500.00				
Bills Payable	445,000.00				
Purchase Creditors	31,615.58	1,020.44			12,752.46
Sundry Creditors	6,286.93	168.24		622.74	
Agents' Credit Balances	30,437.71		716.78		9,140.13
Agents' Pros. Commissions	66,919.04	3,317.89		8,870.86	
Accrued Bond Interest	437.49	145.83		.04	
Accrued Pfd. Stock Dividends	5,522.81	1,841.59		277.44	
Accrued Wages	2,788.31		257.42	595.77	
Accrued Taxes	1,530.44	248.54		1,504.46	

Surplus	250,000.00				
Undivided Profits	20,343.03		2,044.09		35,095.63
Gains to Dec. 30/11	43,765.73				
	1,555,847.07	7,852.53	3,018.29	14,771.31	56,988.22
Increase in Assets		22,869.39		89,351.66	
Decrease in Assets		12,949.56		87,802.84	
			9,919.83		1,548.82
Increase in Liabilities		7,852.53		14,771.31	
Decrease in Liabilities		3,018.29		56,988.22	
			4,834.24		42,216.91
			5,085.59		43,765.73

118 *Monthly Settlement for December, 1911.*

U. S. & Foreign:	12 mos., Dec. 31, 11.		December only.		Increase.	Decrease.
New Scales Sold	1,288,012.58		108,935.24		12,167.85	
2nd Hd. Scales Sold	18,466.79		1,489.65		31.15	
Foreign Scales Sold	29,514.39		2,301.75			4,252.00
Refinished Scales Sold Tol.	700.00		700.00		700.00	
Refinished Scales Exchange	75,653.56		5,147.50			3,054.50
		1,412,347.32		118,574.14		
Total		1,412,347.32		118,574.14	5,592.50	
Toledo Scales Chgd. Back	116,085.31		6,265.25			652.50
Exchange Scales Allowances	99,047.24		8,014.49		1,314.62	
Toledo Scales Allowances	29,051.47		2,943.41			82.59
Special Allowances	22,096.23		1,143.00			73.28
Total		266,280.25		18,366.15	506.25	

Monthly Settlement for December 1911.—Continued.

	12 mos., Dec. 31, 11.	December only.	Increase.	Decrease.
Net Sales U. S.	1,146,067.07	100,207.99	5,086.25	
Manufacturing Expenses	286,900.02	25,419.30	2,344.77	
Gross Gains	859,167.05	74,788.69	2,731.48	
Commercial & Selling Exp.	791,481.96	71,937.00	1,336.24	
Net Gain on Sales U. S.	67,685.09	2,851.69	1,395.24	
Canadian Sales Gains	14,160.64	1,752.99	2,827.56	
Total Sales Gains	81,845.73	4,604.68	4,222.80	
Decrease U. S. Stock	45,494.12	356.59	3,175.65	
Increase Can. Stock	9,968.21	1,232.17		3,307.66
Total	35,525.91	1,588.76		132.01
Net Gain Sales & Stock	46,319.82	6,193.44	4,090.79	
W. & T. Avery Royalties	1,292.71			715.45
Total Gain Scale Business	47,612.53	6,193.44	3,375.34	
Vulcar Loss	3,846.80	1,107.85		1,877.68
Final Gain Net	43,765.73	5,085.59	1,497.66	

119 *Monthly Statement for December,* 1911, *Selling & Commercial.*

	12 mos., Dec. 30, 1911.	December, 1911.	Average per month.
Agents' Commissions	351,006.87	31,097.77	29,250.57
Dist. Mgrs. Commissions	6,420.68	531.49	535.06
Dist. Mgrs. Salaries	42,400.37	3,554.50	3,533.36
H. F. Anderson Expense	768.82	16.07	64.07
S. M. Harrington Expense	1,105.39	67.10	92.12
W. H. Roberts Expense	2,487.06	246.66	207.25

W. W. Graham Expense	1,131.42		84.10		94.28
L. S. Miller Expense	1,776.33				148.03
F. L. Ditzler Expense	794.00		11.40		66.17
J. L. Theobald Expense	450.82		77.40		37.57
F. H. Goadby Expense	16.30				1.36
O. E. Schupp Expense	970.29		118.96		80.85
Theo. Booth Expense	709.70		189.70		59.14
C. J. Roberts Expense	1,239.98		85.50		103.33
F. A. Wallis Expense	127.80				10.65
		11,577.91		896.89	
					21.02
Dist. Mgr. Conv. Expense		252.25			
Spec. Salesmen Salaries		15.31			
Spec. Salesmen Expenses		81.60			
Branch Offices					1,197.61
New York	14,371.26		1,219.78		883.26
Chicago	10,799.10		900.00		706.22
Boston	8,474.69		753.07		
St. Louis	4,112.97		2.25		413.66
Philadelphia	4,963.95		391.30		105.45
Dayton	1,265.38		121.56		148.41
Omaha	1,780.97		62.50		351.65
Minneapolis	4,219.88		320.42		279.15
Cleveland	3,349.83		308.09		46.15
Denver	553.85		10.10		197.34
Seattle	2,368.14		156.84		560.30
Kansas City	6,723.50		31.71		106.45
Milwaukee	1,277.49		216.64		306.92
Buffalo	3,683.07		316.54		404.82

Monthly Statement for December, 1911.—Continued.

	12 mos., Dec. 30, 1911.		December, 1911.		Average per month.
Pittsburgh	4,857.89		650.58		124.92
Indianapolis	1,498.17		259.90		327.64
Cincinnati	3,931.49		259.90		224.42
New Orleans	2,693.02		243.33		2,166.18
San Francisco	25,994.25		1,519.75		687489
Misc. Branch Offices	8,254.69	115,173.59	872.39	8,474.60	
		526,897.96		44,555.25	

120 *Monthly Statement for December,* 1911, *Selling & Commercial.*

	12 mos., Dec. 30, 1911.		December only.		
Forward		526,897.96		44,555.25	43,908.16
Advertising		35,349.47		6,518.59	2,945.79
Traveling		3,777.91		798.62	314.82
Prize Contest	2,637.55		146.15		219.79
Toledo System	2,722.69		504.08		226.89
Hotel Expense	920.80				76.73
Visiting Salesmen	828.04		148.39		69.00
Agents' Supplies Cr.	1,669.18		241.94		139.09
Misc. Selling	3,448.62		68.55		287.38
100% Club Convention	8,324.51	17,213.03		1,109.11	693.71
Total		583,238.37		52,981.57	48,603.19

Commercial Expenses:					
Bond Interest	1,750.04		145.83		145.83
Cash Discount	16,001.98		1,259.63		1,333.49
Collection & Exchange	6,986.83		534.20		582.23
Fidelity Bonds	466.35		421.25		38.86
Freight Outbound	12,991.19		783.51		1,082.59
Freight Inbound	2,844.67		160.24		237.05
Insurance	2,193.19		200.00		182.96
Interest	26,682.86		2,234.31		2,223.57
Kitchen	1,026.69		151.41		85.55
Legal Expense	9,300.59		980.21		775.05
Litigation	1,681.86				140.15
Office Payroll	75,915.22		7,713.63		6,326.27
Office Supplies	8.589.26		816.84		715.77
Patent Expense	15,577.66		1,629.98		1,298.14
Postage	8,103.57		783.18		675.29
Qty. Discount	5,838.77		9.50		486.56
Recording Orders	1,973.73		275.39		164.48
Rent	1,700.00		225.00		141.66
Repairs on Scales	1,712.88 Cr.		196.29		142.74
Taxes	4,150.28		406.09		345.85
Telephone & Telegraph	2,983.43		119.78		248.62
General Expense	3,198.30		301.73		266.52
Total		208,243.59		18,955.43	17,353.63
Combined Total		791,481.96		71,937.00	

	12 mos., Dec. 30, 1911.		December only.		
Direct Labor	80,960.74		7,036.24		6,746.73
Indirect Labor	28,510.92		2,788.61		2,375.91
Material	74,171.30		3,583.16		6,180.94
Total		183,642.96		13,408.01	
Factory Supplies	12,226.15		633.04		1,018.84
Experimental	11,926.75		1,338.57		993.89
Tools & Patterns	12,334.51		1,467.74		1,027.87
Packing & Shipping	12,011.41		636.97		1,000.95
Lumber	1,582.87				131.90
Horse & Wagon	9.00				.75
Trucking	1,168.14		109.97		97.34
Maintenance, etc.	12,099.55		2,300.74		1,008.29
Power, Heat & Light	5,179.61		373.02		431.63
Supt. Salaries, etc	10,072.66		938.00		839.39
Mfg. Expense	3,655.74		501.50		304.64
Repair Dept.	20,990.67		3,711.74		1,749.22
Total		103,257.06		12,011.29	
		286,900.02		25,419.30	23,908.33
Vulcar Dept.:					
Labor	2,897.93				241.49
Material	4,695.40		1.15		391.29
Total		7,593.33		1.15	

Salaries	5,299.50		465.00		441.62
Traveling	2,389.39		110.89		199.11
Miscellaneous	8,270.32		917.32		687.53
Royalties	444.50		251.25		37.04
Total		16,403.71		1,755.46	
Grand Total		23,997.04		1,745.61	1,999.75
Sales	16,861.99	16,861.99		934.63	1,405.16
Loss on Sales		7,135.05		810.98	
Increase in Stock at 25%		3,288.25	Dec.	296.87	
Net Loss		3,846.80	Loss	1,107.85	

122 *Monthly Statement for December, 1911, Canadian.*

	12 mos., Dec. 30, 1911.		December only.		
Direct Labor	25,292.60		2,913.99		2,107.72
Indirect Labor	2,163.36		283.87		180.28
Material	15,551.70		2,455.52		1,295.97
Total		43,007.66		5,653.38	
Mfg. Expense	11,494.87		975.36		957.91
Packing & Shipping	2,975.11		274.99		247.92
Factory Supplies	2,445.65		238.36		203.80
Insurance	590.48		367.09		49.21
Tools & Pattern Expense	828.02		141.77		69.00
Total		18,334.13		1,997.57	
Total Mfg. Expense		61,341.79		7,650.95	5,111.81

Monthly Statement for December, 1911.—Continued.

	12 mos., Dec. 30, 1911.		December only.		
Commissions	46,222.09		5.541.02		3,851.84
Dist. Mgrs. Commissions	13,090.94		1,630.51		1,090.91
General Expense	1,006.51		28.31		83.87
Freight	5,001.57		563.71		416.79
Duty	508.14				42.34
Stationery	961.94		161.86		80.16
Advertising	1,362.84		19.30		113.57
Office Payroll	2,832.84		302.00		236.07
Visiting Salesmen	233.52		101.97		19.46
Total Selling & Commercial		71,220.39		8,348.68	5,935.03
New Scales Sold	159,213.48		18,747.75		13,267.79
2nd Hd. Scales Sold	1,467.50		160.00		122.29
Gross Sales		160,680.98		18,907.75	13,390.08
Toledo Scales chgr. back	9,569.25		816.00		797.44
Exchg. Scale Allowances	2,672.04		135.00		222.67
Toledo Scale Allowances	1,192.13		204.13		99.34
Special Scale Allowances	524.74				43.73
Total		13,958.16		1,155.13	1,163.18
Net Sales		146,722.82		17,752.62	12,226.90
Mfg. Expenses		61,341.79		7,650.95	
Gross Gains		85,381.03		10,101.67	

Commercial & Selling Exp.	71,220.39	8,348.68	
Net Gain on Sales	14,160.64	1,752.99	
Increase in Stock at 33 1/3%	9,968.21	1,232.17	
Final Net Gain	24,128.85	2,985.16	

123 *Summarized Statement for December, 1911.*

Gross U. S. & Foreign Sales (Except Canadian)			
Less Scales ret'd and allowances for Ex. Scales			
Net Sales—U. S. & Foreign (Except Canadian)		100,207.99	
Material, Supplies, Labor & Factory Expense	25,419.30		
Commissions	31,629.26		
Advertising	6,518.59		
Selling Expense	6,359.12		
Branch Offices	8,474.60		
General Expenses	18,955.43		
		97,356.30	
Excess of Sales over Expense Accounts		2,851.69	
Increase in Fin. Scales in Stock at 33 1/3%		356.59	
Net Gain on U. S. Sales			3,208.28
Gross Sales—Canadian		17,752.62	
Less Exchanges & Allowances:			
Net Canadian Sales		17,752.62	
Manufacturing Expenses	7,650.95		
Commissions	7,171.53		
General Expenses	1,177.15		
		15,999.63	
Excess of Sales over Expense Accounts		1,752.99	

Monthly Statement for December 1911.—Continued.

Increase in fin. Scales in Stock at 33 1/3%	1,232.17	
Canadian Gain for Dec		2,985.16
Net Gain on Scale Business		6,193.44
Vulcar Loss for Dec		1,107.85
Final Net Gain for Dec		5,085.59

124 *Summarized Statement for December,* 1911.

Assets:

Cash		31,309.21
Bills Receivable	570,530.39	
Reserve	3,302.85	
		567,227.54
Accounts Receivable	54,366.70	
Reserve	2,447.67	
		51,919.03
Finished Scales in Stock and on Cons. 33 1/3%		210,270.78
Finished Vulcars in Stock and on Cons. 25%		3,756.25
Material & Supplies		100,404.21
Agents' Accts. Dr. Balances	147,247.10	
Reserve	22,687.09	
		124,560.01
Real Estate & Buildings		40,326.57
Mchy., Tools, Patterns & Equip		105,858.12

Office Fixtures (Including Branch Offices)	21,100.64
Sample Cases	14,773.25
Prepaid Ins. & Corp. Taxes	3,074.10
Windsor Plant:	
Material & Supplies	13,292.84
Mchy., Tools, Patterns & Equip	17,974.52
Patents	250,000.00
	1,555,847.07
Liabilities:	
Common Stock Issued	300,000.00
Preferred Stock Issued	316,200.00
Bonds	35,000.00
Bills Payable	445,000.00
Purchase Accounts	31,615.58
Misc. Accounts Payable	6,286.93
Agents' Credit Balances	30,437.71
Agents' Pros. Commissions	66,919.04
Accrued Bond Interest	437.49
Accrued Pfd. Stock Dividends	5,522.81
Accrued Wages	2,788.31
Accrued Taxes	1,530.44
Surplus	250,000.00
Undivided Profits	20,343.03
Gains to Dec. 30, 1911	43,765.73
	1,555,847.07

Exhibit 38 of Plaintiff.

Monthly Statement, February, 1911, Liabilities & Assets.

Assets:	2 mos.	Feb. 28, 1911.	February. Increase.	February. Decrease.	2 months. Increase.	2 months. Decrease.
Cash		50,581.53	8,117.61		6,602.35	
Bills Receivable	569,198.76					
Less Reserve	7,493.78					
		561,704.98		6,657.48		12,463.42
Accts. Receivable	54,979.91					
Less Reserve	3,536.43					
		51,443.48		10,908.42		6,133.48
Mdse.:						
Consgt. Scales U. S. 33 1/3 & 25%	146,931.01			10,392.75		20,327.25
Factory Scales U. S. 33 1/3.	25,850.00		1,537.50		7,824.38	
Factory Scales U. S. Rebuilt 33 1/3	3,802.50		900.00			93.75
Consgt. Scales S. Am. 33 1/3.	350.00					
Consgt. Scales Can. 33 1/3.	24,600.10			208.33	1,408.17	
Factory Scales Can. 33 1/3.	5,884.46		1,351.25		1,668.57	
Loaners Scales 7,829.75 33 1/3	3,150.90					
		210,568.97		40.00	159.50	
Vulcanizers 33 1/3	1,051.04			203.13	583.04	
Agents' Supplies 33 1/3	2,265.22					
		3,316.26		301.87		212.45
Material	74,607.28					
Supplies	16,727.36					
		91,334.64				

Agents' Debit Balances....	118,845.01					
Less Reserve	6,944.44					
		111,900.57	4,016.31		3,487.13	
Plant Account:						
Real Estate & Buildings...	39,908.35					
Machinery	21,840.89		40.75			
Tools & Patterns.....	51,149.09				48.75	
Factory Equipment & Chart Stones	22,072.20		223.92		465.73	
Office & Factory Furniture.	9,898.96		191.11		187.11	
Agency Office Fixtures....	7,281.02			65.24	17.96	
Sample Cases	12,703.57		139.75		231.45	
Horses & Wagons.....	1,676.15		5.40			9.60
Kitchen Equipment	208.99					
		166,739.22				
Windsor Plant:						
Material	5,510.73					
Supplies	179.75					
	1,761.80					
Tools & Patterns.....	11,021.07		8.46		156.71	
Machinery	3,177.85					
Equipment	4,961.07		40.53		57.84	
Factory Fixtures	511.19					
		27,123.46	105.30		105.30	
Prepaid Taxes	674.10			151.12		232.64
Prepaid Insurance	1,328.16	2,002.26		334.23		534.23
Patents		250,000.00				10,580.05
		1,526,715.37	16,677.89	29,262.57	23,003.99	50,586.87

Liabilities:	2 mos., Feb. 28, 1911.	February. Increase.	February. Decrease.	2 mos. Increase.	2 mos. Decrease.
Common Stock Issued	300,000.00				
Preferred Stock Issued	314,000.00			700.00	
Bonds	35,000.00				
Bills Payable	445,000.00				
Purchase Creditors	38,916.71		1,858.62		5,451.33
Misc. Accts. Payable	5,253.65		331.75		410.54
Agents' Credit Balances	37,619.45		230.40		1,958.39
Agents' Pros. Commission	55,962.67	145.83	2,567.44		2,085.51
Accrued Bond Interest	729.07	145.83		291.62	
Accrued Pfd. Stock Dividends	3,691.48	1,845.70			1,553.89
Accrued Wages	3,476.26		130.26	1,283.72	
Accrued Taxes	275.98	175.00		250.00	
Surplus	250,000.00				
Undivided Profits	40,661.15		2,250.61		14,777.51
Loss to March 1, 1911	3,871.05				
	1,526,715.37	2,166.53	7,369.08	2,525.34	26,237.17
Increase in Assets		16,677.89		23,003.99	
Decrease in Assets		29,262.57		50,586.87	
			12,584.68		27,482.88
Increase in Liabilities		2,166.53		2,525.34	
Decrease in Liabilities		7,369.08		26,237.17	
			5,202.55		23,711.83
			7,382.13		3,871.05

	2 mos.	Feb. 28, 1911.	Feb., 1911.		February. Increase.	February. Decrease.
U. S. & Foreign Sales:						
New Scales Sold	203,551.62		103,075.67			
2nd Hand Scales Sold	4,938.50		2,810.00			
Foreign Sales	6,518.75		6,247.50			
Rebuilt Scales Sold	9,020.51		3,673.90			
Total		224,029.38		115,807.07		
Deductions					7,384.76	
Toledo Scales Chg. Back	22,306.18		13,663.30			
Exchange Scales Allowance	15,719.91		7,268.78			
Toledo Scale Allowances	2,686.26		2,017.01			
Special Allowances	3,738.70		2,345.20			
Total Deductions		44,451.05		25,294.29		
Net Sales		179,578.33		90,512.78	6,137.53	
Manufacturing Expenses		51,614.84		27,250.19	447.23	
Gross Gains		127,963.49		63,262.59	2,885.54	
Commercial & Selling Exp.		115,892.01		60,359.36		
Net Gain on Sales		12,071.48		2,903.23		
Canadian Sales Loss		2,958.64		866.76		
		9,112.84		2,036.47		

Monthly Statement, February, 1911, *Sales.*—Continued.

	2 mos.	Feb. 28, 1911.	Feb., 1911.	February. Increase.	February. Decrease.
Decrease in U. S. Stock 33%	12,437.12		7,995.25		
Increase in Can. Stock 33%	3,076.74		1,142.92		
Total Decrease		9,360.38			6,852.33
Net Loss on Sales Stock		247.54			4,815.86
Vulcanizer Sales	1,381.28		612.18		
Vulcanizer Exp.	5,587.83		2,975.32		
Loss	4,206.55		2,363.14		
Stock Increase	583.04		Dec. 203.13		
		3,623.51			2,566.27
Net Loss Vul.		3,871.05			7,382.13
Net Loss		3,511.08			
		7,382.13			

Selling Expenses:	2 mos., Feb. 28, 1911		February only.		February. Increase.	February. Decrease.
Agents' Commissions		53,077.23		27,055.90	1,034.57	
Dist. Mgrs.' Commissions		1,744.64		992.22	239.80	
Dist. Mgrs.' Salaries		6,880.68		3,364.84		151.00
H. F. Anderson's Exp.	62.29		46.34		30.39	
S. M. Harrington Exp.	112.80		71.25		29.70	
W. H. Roberts' Exp.	430.94		235.70		40.46	
W. W. Graham Exp.	158.89		32.55			93.79
L. S. Miller Exp.	393.25		123.81		145.63	
F. L. Ditzler Exp.	256.55		207.30		158.05	
J. L. Theobald Exp.						
F. H. Goadby Exp.	16.30					16.30
O. E. Schupp Exp.	278.56		185.98		93.40	
Theo. Booth Exp.	15.20					15.20
F. A. Walles Exp.	62.25		36.10		9.95	
C. J. Roberts Exp.	187.20		187.20		187.20	
		1,974.23		1,126.23		
Dist. Mgrs.' Expenses		252.25		35.00		182.25
D. M. Convention Exp.		179.69		155.00	130.31	
Spec. Salesmen Salaries		81.60				81.60
Spec. Salesmen Expenses			1,405.20		426.94	

Monthly Statement for February, 1911, Selling.—Continued.

	2 mos., Feb. 28, 1911		February only.		February. Increase.	February. Decrease.
Office Expense:						
New York	2,383.46		711.35		12.69	
Chicago	1,410.01		365.46			448.86
Boston	1,179.78		330.37			103.84
St. Louis	764.58		237.16			48.60
Philadelphia	522.92		99.53		24.85	
Dayton	174.21		182.86		20.37	
Omaha	345.35		371.70		51.94	
Minneapolis	691.46		250.22			62.44
Cleveland	562.88		65.00			
Denver	130.00		248.09		.62	
Seattle	495.56		871.61		428.21	
Kansas City	1,315.01		25.00			
Milwaukee	50.00		356.04		27.11	
Buffalo	684.97		105.72			80.70
Pittsburgh	292.14		126.40			8.49
Indianapolis	261.29		318.33			23.08
Cincinnati	659.74		351.47		66.85	
New Orleans	636.09		2,432.89		849.35	
San Francisco	4,016.43		480.94		177.97	
Misc. Offices	783.91					
Branch Offices		17,359.99		9,335.34		
		81,550.11		42,064.53		

Monthly Statement for February, 1911, Selling.

	2 mos., Feb. 28, 1911.		February only.		February. Increase.	February. Decrease.
Forward		81,550.11		42,064.53		
Advertising		1,605.91		1,182.42	770.93	
Traveling		478.25		313.00	147.75	
Prize Contest	869.64		634.99		400.34	
Toledo System	203.38		103.50		3.62	
Hotel Expense	117.75					117.75
Visiting Salesmen	142.22		71.52		.82	
Agents' Supplies	Cr. 675.22		668.63			675.22
Misc. Selling	341.81		24.70			391.21
Total Misc. Selling		999.58		116.68		
Grand Total Selling Ex.		84,633.85		43,682.63		
Commercial		31,258.16		16,676.73		
		115,982.01		60,359.36		

Commercial:	2 mos., Feb. 28, 1911.	Feb. only.	Feb. Increase.	Feb. Decrease.
Bond Interest	291.62	145.83	.04	
Cash Disct.	2,876.37	1,549.15	221.93	
Collection & Exchange	1,053.00	512.67		27.66
Fidelity Bonds	3.00	7.75	12.50	
Freight Outbound	2,629.82	1,363.86	97.90	
Freight Inbound	526.79	257.07		12.65
Insurance	178.14	21.86		221.86
Interest	4,546.24	2,176.00		194.24
Kitchen	128.48	73.19	17.90	
Legal Expense	1,683.88	544.84		594.20
Litigation	83.05	58.05	33.05	
Office Payroll	11,274.71	5,690.88	107.05	
Office Supplies, etc.	1,207.07	609.17	11.27	
Patent Expense	687.09	543.65	400.21	
Postage	1,179.36	618.39	57.42	
Quantity Disct.	2,127.40	2,103.30	2,079.20	
Recording Orders	235.64	77.74		80.16
Rent	500.00	100.00		
Repairs on Scales	Cr. 868.42	304.47	259.48	
Taxes	686.04	459.92	233.80	
Telephone & Telegraph	247.02	120.52		488.06
General Expenses	281.86	232.12	182.38	
Total	31,258.16	16,676.73		

Mfg. Expenses:	2 mos., Feb. 28, 1911.		February only.		February. Increase.	February. Decrease.
Direct Labor	14,911.15		7,664.91		418.67	
Indirect Labor	4,674.06		2,476.25		278.44	
Material	16,762.87		8,552.60		341.33	
Total		36,348.08	.....	18,693.76		
Factory Supplies	2,342.38		1,364.69		387.00	
Experimental	2,329.63		1,270.70		211.77	
Tools & Patterns	2,106.13		1,210.56		314.99	
Packing & Shipping	1,033.84		670.69		307.54	
Lumber	264.90		139.39		13.88	
Horse & Wagon	5.50					5.50
Trucking	124.95					124.95
Maintenance etc.	904.29		328.18			247.93
Power Heat & Light	1,078.15		616.82		155.49	
Supt. & Factory Office	1,525.16		754.16			16.84
Misc. Mfg.	534.36		145.86			242.64
Rebuilt Dept.	3,017.47		2,055.38		1,093.29	
		15,266.76		8,556.43		
Grand Total		51,614.84	.....	27,250.19		
Vulcanizer Dept.:						
Labor 5,587.83	1,065.55		533.64			
Material	2,611.71		1,754.02			
Total		3,677.26	.....	2,287.66		

Monthly Statement for February, 1911, Mfg.—Continued.

	2 mos., Feb. 28, 1911.		February only.		February. Increase.	February. Decrease.
Salaries	750.00		325.00			
Traveling Expenses	829.95		341.56			
Misc.	330.62		21.10			
Total		1,910.57	.....	687.66		
Grand Total		5,587.83		2,975.32		
Increase in Stock	583.04					

132 *Monthly Statement, February, 1911, Canadian.*

Direct Labor	3,082.00		1,601.84		121.68	
Indirect Labor	318.05		152.11			13.83
Material	3,205.06		1,363.47			478.12
Total		6,605.11	.....	3,117.42		
Mfg. Expense	757.77		199.71			358.35
Packing & Shipping	428.67		177.23			74.21
Maintenance etc.	.....	.....				
Factory Supplies	594.82		417.82		240.82	
Factory Insurance	115.40					115.40
		1,896.66		794.76		
Grand Total Mfg. Exp.		8,501.77	.....	3,912.18		

Selling Expenses:						
Agents' Commission	3,922.38		2,436.59		950.80	
Dist. Mgr. Commission....	982.40		654.00		352.60	
General Expense	433.94		222.62		11.30	
Freight	818.33		327.21			163.91
Duty	423.54		5.83			411.98
Stationary	322.21		263.56		204.91	
Advertising	43.30					43.30
Office Payroll	374.00		193.00		12.00	
Total Commercial & Selling		7,320.10	.....	4,102.81		
Sales:						
New Scales Sold.....	14,802.73		8,179.23		1,555.73	
2nd Hd. Scales Sold.....	385.00		100.00			185.00
Gross Sales		15,187.73	.....	8,279.23		
Deductions:						
Toledo Scales chgd. back..	1,836.00		848.50			139.00
Exchange Scale Allowances	161.00		75.00			11.00
Toledo Scale Allowances..	207.50		207.50		87.50	
Special Allowances	120.00					
Total Deductions		2,324.50	.....	1,131.00		
Net Canadian Sales.....		12,863.23	.....	7,148.23		

Monthly Statement, February, 1911, Canadian.—Continued.

	2 mos., Feb. 28, 1911.		February only.	February. Increase.	February. Decrease.
Mfg. Expenses	8,501.77	.....	3,912.18		
Gross Gains	4,361.46	.....	3,236.05		
Selling & Commercial	7,320.10	.....	4,102.81		
Net Loss on Sales	2,958.64	.....	866.76		
Increase in Consgt. Stock 25%	3,076.74	.....	1,142.92		
Final Net Gains to Feb. 28, 1911	118.10	.....	276.16		

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Summarized Statement for February, 1911.

Assets:

Cash	.....		50,581.53
Bills Receivable	569,198.76		
Less Reserve	7,493.78		
	561,704.98		
Less Reserve	54,979.91		
	3,536.43		
			51,443.48
Finished Scales in Stock & on Consigt. 33⅓ & 25%			210,568.97
Finished Vulcanizers in Stock on Consigt. 25%			1,051.04
Material Supplies			93,599.86
Agts.' Accts. (Dr. Balances)	118,845.01		
Less Reserve	6,944.44		
			111,900.57

Real Estate & Buildings	39,908.35
Mchy., Tools, Patterns & Equip.	96,947.32
Office Fixtures (Including Branch Offices)	17,179.98
Samples Cases	12,703.57
Prepaid Ins. & Cor. Taxes	2,002.26
Windsor Plant:	
Material & Supplies	7,452.28
Mchy., Tools, Patterns & Equip.	19,671.18
Patents	250,000.00
	1,526,715.37
Liabilities:	
Common Stock Issued	300,000.00
Preferred Stock Issued	314,000.00
Bonds	35,000.00
Bills Payable	445,000.00
Purchases Accounts	38,916.71
Misc. Accts. Payable	5,253.65
Agents' Credit Balances	37,619.45
Agents' Prospective Commissions	55,962.67
Accrued Bond Interest	729.07
Accrued Pfd. Stock Dividends	3,691.48
Accrued Wages	3,476.26
Accrued Taxes	275.98
Surplus	250,000.00
Undivided Profits	40,661.15
Loss to Mar. 1, 1911	3,871.05

Gross U. S. & Foreign Sales (Except Canadian)	115,807.07		
Less Scales retd. & Allowances for Ex. Scales	25,294.29		
Net Sales U. S. & Foreign (Except Canadian)		90,512.78	
Material Supplies Labor & Fcty. Expenses	27,250.19		
Commissions	28,048.12		
Advertising	1,188.42		
Selling Expense	5,110.75		
Branch Offices	9,335.34		
General Expenses	16,676.73		
		87,609.55	
Excess of Sales over Exp. Accts.		2,903.23	
Decrease in finished Scales in Stock 33⅓%		7,995.25	
Total Loss U. S. & Foreign (Except Canadian) for Feb., 1911			5,092.02
Gross Sales in Canada	8,279.23		
Less Exchanges & Allowances	1,131.00		
Net Canadian Sales		7,148.23	
Mfg. Expenses	3,912.18		
Commissions	3,090.59		
General Expenses	1,012.22		
		8,014.99	
Excess of Exp. Accts. over Sales		866.76	

Increase in finished scales in Stock 25%	1,142.92	
Canadian Business Gain for Feb., 1911		276.16
Net Loss on Scales Business		4,815.86
Vulcanizer Sales	612.18	
Vulcanizer Expenses	2,975.32	
Excess of Exp. over Sales	2,363.14	
Decrease in finished Vul. in Stock 25%	203.13	
Net Loss on Vulcanizer Business Feb., 1911		2,566.27
Final Net Loss Feb., 1911		7,382.13

Exhibit 9 of Plaintiff.

Monthly Statement for the Eight Months Ending August 31, 1912.

Monthly Statement for August, 1912, Mfg.

	8 mos., Aug. 31, 1912.		August only.		
Direct Labor	63,250.64		8,773.78		8.33
Indirect Labor	19,813.02		2,534.31		2.40
Material	70,038.24		8,119.17		7.70
Total		153,101.90		19,427.26	
Factory Supplies	10,089.26		954.12		.90
Experimental	11,714.62		1,549.94		1.47
Tools & Patterns	8,958.96		2,150.01		2.04
Packing & Shipping	8,638.68		1,003.79		.95
Trucking	1,449.51		28.88		.03
Maintenance etc.	7,006.49		894.80		.85
Power Heat & Light	4,685.36		299.40		.28
Sup. Office Salaries	8,550.06		1,334.75		1.27
Misc. Mfg. Expense	2,128.84		232.11		.22
Service Dept.	2,677.36		87.47		.08
Chart Stones	1,104.00		2.10		
Refinish Dept.	10,045.20		1,195.29		1.13
		77,048.34		9,557.72	
Total		230,150.24		28,984.98	27.49

Vulcars:					
Sales	5,973.08		156.47		
Expenses	5,770.40		27.12		
		Gain 202.68		128.35	
Loss in Sales		1,625.01		Inc. 75.00	
Increase in Stock 25%		1,422.33		Gain 204.35	
Net Vulcar Loss					

136 *Monthly Statement for August, 1912, Selling.*

	8 mos., Aug. 31, 1912.		August only.		
		240,884.27		25,874.34	
Agents Commission		10,328.91		1,602.46	26.52
D. M. Branch Commission		24,247.70		2,463.34	1.64
D. M. Salaries					2.53
H. F. Anderson	323.98		46.35		
Theo. Booth	552.22				
F. L. Ditzler	254.52				
W. W. Graham	813.47		85.54		
S. M. Harrington	140.07				
G. Roberts	973.05		105.35		
W. H. Roberts	1,219.90		146.06		
O. E. Schupp	899.64		111.79		
J. L. Theobald	439.30		1.70		
W. E. Bitcher	525.95		72.40		
		6,142.10		569.19	

Monthly Statement for August, 1912, Selling.—Continued.

	8 mos., Aug. 31, 1912.		August only.		
Albany	173.19				.58
Atlanta & Dist.	883.46				
Boston	4,142.77		460.88		
Buffalo	1,417.00				
Chicago & Dist.	6,911.98		821.90		
Cincinnati	2,576.07		291.85		
Dallas	55.00				
Dayton & Dist.	3,075.83		226.75		
Denver	341.95		134.20		
Detroit	1,786.76		212.45		
Indianapolis	1,335.65		157.71		
Kansas City	666.34		2.85		
Milwaukee	1,421.96		174.95		
Minneapolis	2,638.90		339.49		
New Orleans	1,535.19		73.98		
New York & Dist.	7,259.35		473.77		
Omaha	Cr. 62.50				
Philadelphia & Dist.	3,674.14		551.88		
Pittsburg & Dist.	7,135.05		786.77		
San Francisco & Dist.	15,365.27		1,960.19		
Seattle	394.52		50.00		
Cleveland	2,002.26		207.68		
Spokane	720.70		109.30		
St. Louis	938.51		303.95		
Los Angeles	264.94		264.94		
		66,654.29		7,599.79	
		348,257.27		38,109.12	

	8 mos., Aug. 31, 1912.		August only.		
Forward	.....	348,257.27		38,109.12	39.06
Advertising	.....	23,173.49		1,737.41	1.78
Agents Supplies	831.50		268.47		.28
Agents Prizes	1,918.98		631.53		.65
D. M. Convention	1,381.95				
Misc. Selling	1,080.07		56.84		.06
Toledo System	1,985.00		89.01		.09
Traveling	3,110.09		457.35		.47
Visiting Salesmen	2,085.26		128.25		.13
100% Club	3,853.95		1,246.85		1.28
		16,246.80		2,878.30	
Total	.....	387,677.56		42,724.83	43.80
Commercial:					
Bond Interest	1,166.66		145.83		.15
Cash Discount	10,242.80		1,080.03		1.11
Collection & Exchanges	3,476.41		409.93		.42
Fidelity Bonds	112.76		1.75		.39
Freight Outbound	8,365.44		377.73		.23
Freight Inbound	2,800.82		222.49		.22
Insurance	1,156.08		213.52		2.29
Interest	17,781.14		2,229.31		.15

Monthly Statement for August, 1912, Selling & Commercial.—Cont'd.

	8 mos., Aug. 31, 1912.		August only.		
Kitchen	1,212.61		141.72		1.22
Legal Expense	7,840.30		1,194.11		.13
Litigation	4,435.00		128.75		7.87
Office Payroll	54,520.17		7,682.88		.44
Office Supplies	5,809.12		433.43		3.23
Patent Expenses	18,090.68		3,147.99		.62
Postage	5,938.22		605.01		.08
Quantity Discount	883.50		83.50		.14
Recording Orders	1,269.41		134.34		.23
Rent	1,800.00		225.00		.84
Taxes	3,847.78		819.99		.35
Telephone & Telegraph	3,109.33		340.63		.64
General Expense	2,817.94		623.75		.01
Donations	381.00		10.00		20.76
Total		157,057.17		20,251.69	
Combined Selling Commercial		544,934.73		62,976.52	

U. S. & Foreign Sales:	8 mos., Aug. 31, 1912.		August only.	
New Scales Sold	$40,664.11		110,515.31	
2nd Hd. Scales Sold	8,518.30		305.00	
Foreign Sales	26,718.80		40.09	
Refinished Sales Toledo	36,064.50		3,225.00	
Refinished Sales Comp.	50,588.00		5,992.00	
Supply Sales	1,977.79		207.31	
Total		964,531.50		120,284.71
Toledo Charged Back	71,084.98		8,784.40	
2nd Hd. Charged Back	1,063.00			
Ref. Toledo Charged Back	2,011.50		560.50	
Ref. Comp. Charged Back	6,224.00		775.00	
Exchg. Scale Allowances	55,465.58		6,039.03	
Toledo Scale Allowances	22,650.26		2,274.07	
Spec. Allowances	4,918.71		470.00	
Spec. Allowances Misc.	8,544.01		3,831.58	
Total		171,962.04		22,734.58

Monthly Statement for August, 1912, Loss & Gain U. S.—Continued.

	8 mos., Aug. 31, 1912.			August only.
Net Sales		792,569.46		97,550.13
Mfg. Expenses		230,150.24		28,984.98
Gross Gains		562,419.22		68,565.15
Com'l & Selling Expenses		544,734.73		62,976.52
Net Gain U. S. & Foreign		17,684.49		5,588.63
Canadian Sales Gain		11,875.12		2,860.75
W. & T. Avery Royalties		555.12		.....
		30,114.73		8,449.38
Increase in U. S. Stock 33⅓%	31,763.13		Dec. 4,959.89	
Increase in Can. Stock 33⅓%	6,172.19		Inc. 1,761.80	
Total		37,935.32		3,198.09
Net Gain Sales Stock		68,050.05		5,251.29
Vulcar Loss		1,422.33		204.35
Final Net Gain Aug. 31, 1912		66,627.72		5,455.64

New Scales Sold	110,515.31	91.90
2nd Hd Scales Sold	305.00	.20
Foreign Sales	40.09	.10
Refinished Toledos	3,225.00	2.60
Refinished Comp'n	5,992.00	5.00
Supply Sales	207.31	.20
	120,284.71	100.00%
Charges Back	10,119.90	8.40
Exchg. Allowances	6,039.03	5.01
Toledo Scale Allowances	2,274.07	1.96
Spec. Allowances Marring	470.00	.39
Spec. Allowances Misc.	3,831.58	3.19
Foreign Discount:		
Mfg. Expenses	28,984.98	24.08
Commercial Exp.	20,251.69	16.82
Selling Exp.	42,724.83	35.51
Decrease in Stock 33⅓%	4,959.89	4.12
	119,655.97	99.48
Gain	628.74	.52

Mfg. Expenses:

Gross Sales	120,284.71
Less Decrease at list	14,879.67
	105,405.04

Gross Production for August, 1912.—Continued.

10540504—1
21081008—2
31621512—3
42162016—4
52702520—5
63243024—6
73783528—7
84324032—8
94864536—9

474322680

Table for Com'l & Selling:

9755013—1
19510026—2
29265039—3
39020052—4
48775065—5
58530078—6
68285091—7
78040104—8
87795117—9

438975585

	8 mos., Aug., 1912.		August only.		
Direct Labor	17,881.97		1,743.55		8.12
Indirect Labor	1,599.96		140.35		
Material	14,627.61		1,998.75		
		34,109.54		3,882.65	
Supplies	1,118.06		119.64		
Experimental	5.47		.....		
Tools & Patterns	147.52		26.22		
Packing & Shipping	2,236.19		284.01		
Maintenance, etc.	104.79		.....		
Power Heat & Light	1,621.37		184.79		
Supt. Office Salaries	4,179.25		541.75		
Misc. Mfg.	666.39		65.86		
Repairs on Scales	321.12		107.60		
Govm't Inspection	631.85		61.60		
		10,736.97		1,391.47	
Total		44,846.51		5,274.12	
Cash Discount	921.15		100.37		
Collection & Exchange	996.20		124.63		
Freight Outbound	2,805.66		462.00		
Freight Inbound	328.27		115.12		
Insurance	389.68		48.71		
Legal Expense	100.14		7.40		
Office Supplies	466.75		17.08		

Monthly Statement for August, 1912, Canadian.—Continued.

	8 mos., Aug., 1912.		August only.	
Postage	125.07		13.00	
Qty. Discount	191.50		36.00	
Recording fees	77.70		13.95	
Rent	800.00		100.00	
Telegraph & Telephone	113.57		25.25	
General Expense	84.95		1.06	
Total		7,400.64		1,064.57
Agents' Commissions	32,957.44		3,686.21	
D. M. Commissions	9,525.31		1,329.38	
Advertising	434.54		281.30	
Misc. Selling	114.75		.....	
Travelling	64.30		2.00	
Visiting Salesmen	377.45		90.55	
		43,473.79		5,389.44
Total		50,874.43		6,454.01
		95,720.94		11,728.13

	8 mos., Aug. 31, 1912.		Aug. only.		
New Scales Sold	116,697.20		16,185.00		
2nd Hd. Scales Sold	1,054.81		.....		
Ref. Scales Sold	520.00		.....		
Supply Sales	29.75		.....		
Gross Sales		118,301.76	.....	16,185.00	
Toledo Scales Chgd. Back	7,737.20		1,137.70		
2nd Hd. Scales Chgd. Back	25.00		.....		5.29
Ref. Scales Chgd. Back	55.00		.....		
Exchg. Scale Allowances	1,430.67		243.42		1.13
Toledo Scale Allowances	1,404.41		265.00		1.23
Spec. Allowances Marring	3.42		Cr. 50.00		Cr. .23
Spec. Allowances Misc.	50.00				
Total		10,705.70	.....	1,596.12	
Net Canadian Sales		107,596.06		14,588.88	
Mfg. Expenses		44,846.51		5,274.12	24.57
Gross Gains		62,759.55		9,314.76	
Com'l & Selling		50,874.43		6,454.01	30.06
Net Gain on Sales		11,875.12		2,860.75	
Increase in Stock 33⅓%		6,172.19		1,761.80	
Final Net Canadian Gain to Sept. 1/12		18,047.31		4,622.55	

Statement of Assets & Liabilities as of August 31, 1912.

Assets:		
Bills Receivable	540,714.14	
Reserve	349.78	
		540,364.36
Accts. Receivable	67,834.90	
Reserve	2,113.97	
		65,720.93
Fin Scales in Stock & on Consgt. 33⅓%		249,181.55
Material & Supplies		94,497.10
Agents' Debit Balances	161,554.90	
Reserve	3,403.17	
		158,151.73
Real Estate & Buildings		40,326.57
Mchg. Tools, Patterns & Equip.		117,540.02
Office & Branch Office Fix. & Equip.		42,779.89
Prepaid Expenses		4,576.09
Patents		250,000.00
Canadian Fcty. at Windsor, Ont.:		
Material & Supplies		16,674.36
Mchy., Tools, Patterns & Equip.		21,868.72
		1,601,681.32

Liabilities:

Bank Overdraft	600.33
Bonds	35,000.00
Bills Payable	445,000.00
Purchase Creditors	44,714.81
Sundry Creditors	9,212.26
Agents' Credit Balances	30,766.75
Agents' Pros. Commissions	68,990.78
Accrued Bond Interest	729.15
Accrued Prf. Stock Dividends	3,693.27
Accrued Wages	3,147.03
Accrued Taxes	1,287.30
Common Stock Issued	300,000.00
Preferred Stock Issued	317,300.00
Surplus	250,000.00
Undivided Profits	24,611.92
Gain to Sept. 1, 1912	66,627.72
	1,601,681.32

Monthly Statement for August, 1912, Liabilities.

	8 mos., August 31, 1912.	August. Increase.	August. Decrease.	8 mos. Increase.	8 mos. Decrease.
Bank Overdraft	600.33	600.33	.....	600.33	
Bonds	35,000.00	.....	.....	.....	
Bills Payable	445,000.00	.....	.....	13,099.23	
Purchase Creditors	44,714.81	.....	7,517.72	2,925.33	
Sundry Creditors	9,212.26	874.32	.....	339.90	
Agents' Credit Balances	30,766.75	.....	1,421.48	3,093.07	
Agents' Pros. Commissions	68,990.78	1,079.67	.....	291.66	
Accrued Bond Interest	729.15	145.83	.....	.....	1,829.54
Accrued Pfd. Stock Dividends	3,693.27	1,846.81	.....	358.72	
Accrued Wages	3,147.03	.....	656.05	.....	243.14
Accrued Taxes	1,287.30	525.19	.....	.....	
Common Stock Issued	300,000.00	.....	.....	1,100.00	
Preferred Stock Issued	317,300.00	200.00	.....	.....	
Surplus	250,000.00	.....	.....	.....	25,179.30
Undivided Profits	24,611.92	.....	1,846.81	.....	
Gains to Sept. 1, 1912	66,627.72	.....	.....	21,808.24	27,251.98
	1,601,681.32	5,272.15	11,442.06		
Increase in Assets		22,783.92		132,859.61	
Decrease in Assets		23,498.19		71,675.63	
			714.27		61,183.98
Increase in Liabilities		5,272.15		21,808.24	
Decrease in Liabilities		11,442.06		27,251.98	
			6,169.91		5,443.74
			5,455.64		66,627.72

	8 mos., Aug. 31, 1912.		August. Increase.	August. Decrease.	8 months. Increase.	8 months. Decrease.
Cash				10,960.86		31,309.21
Bills Receivable	540,714.14					
Reserve	349.78			1,157.99		33,557.73
		540,364.36				
Accts. Receivable	67,834.90					
Reserve	2,113.97		8,445.63		24,324.51	
		65,720.93				
Consgt. Scales U. S. 33⅓%	149,236.25			8,541.65	20,849.81	
Consgt. Scales Comp. 33⅓%	17,768.42			243.66		1,699.56
Factory Scales New 33⅓%	27,098.33		4,409.16		15,608.33	
Factory Scales Comp. 33⅓%	4,050.00			508.33	666.67	
S. Am. & Eur. Consgt. 33⅓%	842.75		30.00		420.00	
Ref. Scales Factory 33⅓%	3,545.00			631.67		2,918.33
Loaner 3,331.75 33⅓%	1,110.58		430.33			198.34
Consgt. Scales Canada 33⅓%	36,449.39		1,410.14		5,023.86	
Consgt. Scales Comp. 33⅓%	2,900.00		93.33		821.67	
Factory Scales New 33⅓%	6,180.83		258.33		326.66	
		249,181.55				
Scale Supplies	1,628.78		95.93			367.45
Vulcars	2,240.62		75.00			1,625.01
Material	71,760.59				2,540.47	
Factory Supplies	18,867.11				2,265.83	
		94,497.10				
Agents' Debit Balances	161,554.90					
Reserve	3,403.17		5,594.20		34,623.91	
		158,151.73				

Monthly Statement for August, 1912, Assets.—Continued.

	8 mos., Aug. 31, 1912.		August. Increase.	August. Decrease.	8 months. Increase.	8 months. Decrease.
Real Estate & Buildings ...	40,326.57					
Machinery	27,453.69		6.72		3,687.10	
Tools & Patterns	60,000.68			1,452.99	3,968.35	
Factory Equipment	14,446.36		195.59		2,287.70	
Chart Stores	13,612.13		82.82		1,632.89	
Office & Factory Furniture .	15,051.16		28.86		1,203.07	
Kitchen Equipment	277.16					
Motor Truck	1,750.00					
Agency Office Fixtures	11,075.37		123.10		1,451.53	
Sample Cases	16,653.36		21.75		1,880.11	
		200,646.48				
Prepaid Insurance	3,184.39			1.04	1,014.52	
Prepaid Taxes	1,391.70		12.46		928.37	
		4,576.09				
Patents		250,000.00				
Canadian Fety., Windsor, Ont.:						
Material	14,641.38				3,749.76	
Supplies	2,032.98				585.76	
Tools & Patterns	10,220.01		1,452.99		2,289.89	
Equipment	5,312.64		17.58		554.75	
Machinery	4,805.50				119.74	
Furniture & Fixtures	1,530.57				24.35	
		38,543.08				
		1,601,681.32	22,783.92	23,498.19	132,859.61	71,675.63

Net Sales U. S. & Foreign		97,550.13	
Material Supplies Labor & Factory Exp.	28,780.63		
Commissions	27,476.80		
Advertising	1,737.41		
Selling Expense	5,910.83		
Branch Offices	7,599.79		
General Expenses	20,251.69		
	91,757.15		
Plus Decrease in Fin. Stock 33⅓%	4,959.89		
Total U. S. & Foreign Sales Cash		96,717.04	
Net Gain U. S. & Foreign Sales			833.09
Net Canadian Sales		14,588.88	
Mfg. Exenses	5,274.12		
Commissions	5,015.59		
General Expenses	1,438.42		
	11,728.13		
Less Increase in Stock 33⅓%	1,761.80		
Total Canadian Sales Cash		9,966.33	
Net Canadian Gain			4,622.55
Net Gain for August 1912			5,455.64

"Referring to the account on the ledger for the San Francisco Branch Office, on Page 287, I find that the total expenditure for the year 1911 was $25,994.25; the expenditure for the New York Branch Office account, page 252 of the ledger, was $14,371.26; that of the Chicago Branch Office, on page 254 was $10,799.10, and that of the St. Louis Branch Office was, on page 260, $4,112.97. The items entering into the expenditures in the San Francisco office, would be shown on the Journal entries, but I could not tell what they are without looking them up. The ledger account shows total disbursements of $43,070.88, and total credits of $16,076.63, leaving as net, the figure $25,994.25, which I have used in this Account. The expenses were in connection with the operation of that office, which is the headquarters for our entire western district—all states west of Denver. This office had been instituted before 1911, and the charges in 1911 were for the operating expenses only. The total disbursements for the year are $42,070.88, and credits $16,076.63. There are individual disbursements of cash $5,900.55, draft 2/18, sight draft of $1,665.90 and an item of $5,353.12, March 31st. I do not remember about these items. I could not tell what they are without referring to the Cash Disbursed records."

"For the next item, Miscellaneous Selling expenses, we have an account on the ledger, page 312. Its total is $3,448.62. The
116 total used in that item, in the account filed, is that of a lot of accounts combined together which are all miscellaneous selling expense, totalling $53,031.42. For example, the account on the ledger headed Miscellaneous Selling, totals $3,448.62 for the year 1911. Then there is an account, District Managers' Convention expense of $252.25. Special Salesmen's Salary and Expense, $66.29. Advertising, $35,349.47. Traveling, $3,777.91. This traveling expense account covers officers' traveling expenses, and is entered on page 301 of the ledger. I note there are items of traveling expense for F. L. Ditzler, H. Theobald, C. H. Hapgood and myself, mine a trip to Canada. In this particular item it shows that I was visiting the Windsor factory in Canada.

Then testimony as follows:

Q. Then you have been to the Windsor factory?
A Yes, sir.
Q. That's an assembling plant there, is it?
A. Yes, sir. They manufacture scales.
Q How do they manufacture scales?
A. The same as they do here.
Q. You send the parts from here, don't you?
A. No, they manufacture parts over there.
Q. What do they manufacture over there?
A. I could not say. I do not know what particular parts they manufacture. Castings are sent directly from Hamilton and some small parts I presume we send from here. What parts they are, I don't know.
Q. What do you ship from here?

A. I could not say. I have not any idea.
Q. Do you know whether they ship parts of the cylinder from here?
A. I could not say.
Q. You could not say that?
A. No, sir. I have never looked over any of the invoices.
Q. You don't know anything about that?
A. No, sir.
Q. When was that Windsor factory started?
A. I don't recall the date. I think it was started, though, when I came here.
Q. Have you not a record of everything you ship over there?
147 A. Yes, we have in the building, and I have been going over the books and can't tell what parts are shipped from here to Canada.
Q. How is it that the traveling expenses of men who have separate traveling expense accounts are entered in this account of Traveling Expenses when those men are District Managers?
A. I don't believe I understand your question, Mr. Zane.
Q. Well, you see there a District Manager, C. H. Hapgood.
A. He is not a District Manager.
Mr. Meads: He is here in the factory.

Mr. Zane:

Q. Well, let's take Ditzler. There is one item of Ditzler.
A. I don't know why that is charged to Traveling Expense.
Q. You don't know why that's there?
A. The voucher would probably explain that.
Q. That account of Traveling Expense covers officers' traveling expenses, does it not?
A. Yes, sir.

"The next item of the Miscellaneous Selling Expenses, Prize Contests, $2,637.55, prizes offered for contest between all of our salesmen for selling all kinds of scales, both in the United States and Canada. Then there is an item for the 'Toledo System,' $2,722.69, a periodical published here in the interest of the company and circulated throughout the United States and Canada. Then 'Hotel Expense of Salesmen or District Managers Visiting Toledo' during the year, $920.80. This matter covers both Canadian and United States salesmen. The next account is that of Visiting Salesmen, $828.04. These are expenses while at Toledo, hotel expenses or expenses coming to and returning from Toledo, and cover both United States and Canadian salesmen."

"The next item is 'Agents' Supplies,' a credit deducted. The next item is 100% Club Convention, $8,324.51. This was a convention of salesmen who had achieved 100% of the quota of sales alloted to them by the company during the year. The 100% Club includes the Canadian salesmen as well as those in the United States. These

items entering into Miscellaneous Expense, have been grouped
148 under the title 'Miscellaneous Selling,' and I have used in this Account the entries during the last ten months of 1911, $53,031.42. The total for the year is $56,658.95. For the next item, 'Cash and Quantity Discounts,' we have an account on the ledger, Cash Discounts, $16,001.98 for 1911, and another account, Quantity Discounts, $5,838.77 for 1911. These accounts include the cash and quantity discounts in both the United States and Canada, and we allow the cash and quantity discounts on all kinds of scales. I do not believe we could distinguish on the books between the cash discounts allowed for cylinder scales as distinguished from other kinds of scales, but we probably could do so with relation to the quantity discounts. I did not do it because it was taken on as a commercial expense."

"The next item, 'Collection and Exchange,' we carry in one account on the ledger, page 155, a total for the year 1911, $6,986.83. This account covers Collection and Exchange on Canadian sales as well as the United States sales, and refers to all kinds of scales. We made the collections for Canadian sales here in the United States. We have no way of separating cylinder scales from other scales in that account.

"For the next item, 'Fidelity Bonds,' we have an account on page 157 of the ledger. This account covers the bonds of employees in the factory, including myself, and does not cover agents or managers outside of the factory."

"The next item, 'Freight on Scales,' is entered in two accounts on the ledger, freight out-bound, and freight in-bound, the totals for these accounts for the year 1911 being, freight out-bound $12,991.19, and in-bound, $2,844.67. These freight accounts cover all kinds of scales, and we have no way of separating freight on cylinder scales from that on any other kind of scales. I do not know what the relative cost would be of shipping a cylinder scale, to that of shipping a fan scale, by freight.

"For the next item, 'Insurance,' we have an account on the ledger, $2,193.19; for the whole year it would be $2,634.09. This Insurance covers the plant and equipment at Toledo and nothing away from Toledo.

"The next item, 'Interest,' is for the whole year 1911, $26,682.86.
This account represents interest on money borrowed, and
149 there is included one item of bond interest of $1,750.04 for the year.

"For the next item, 'Dining Room,' we have an account on the ledger. This expense covers the dining room maintained at the factory for the benefit of employees.

"For the next item, 'Legal Expense,' we have an account on the ledger which shows, for the whole year, $9,300.50. This account shows disbursements made during the year to Messrs. Brown and Geddes, Mr. Albert H. Meads, and others. The ledger would not show what these payments are for, but the Journal entries and vouchers probably would. We do not keep the Legal Expense

vouchers separate from the other vouchers. Legal Expense Vouchers cover attorney's fees in the collection of accounts."

(Witness was here asked to secure certain of these Legal Expense vouchers and present them at the next day's hearing.)

"For the next item, 'Litigation,' we have an account on page 175 of the ledger and showing a total for the whole year 1911 of $1,-681.86. The items in this account show disbursements to Rector, Hibben & Davis, Albert H. Meads, and others.

(Witness was asked to secure certain vouchers of this Account and present them at the next day's hearing.)

"The next item, 'Office Pay Roll,' covers the pay roll here at Toledo and does not cover anything paid out at branch offices. The pay of men who attend to the shipments, whether to Canada or elsewhere, are charged to Shipping and Packing, and this Office Pay Roll Account refers to the pay of bookkeepers, the executive force, etc., whether these bookkeepers work on the Canadian or United States accounts."

"The next item, 'Office Supplies,' refers only to Office Supplies used here in Toledo, and includes the cost of the books used in the keeping of Canadian accounts."

"For the next item, 'Patent Expense,' we have an account on page 180 of the ledger, totaling $15,557.66 for the year 1911. Certain items of this account show payments to John D. Burkholder, who was employed in the Patent Department, Toledo, and Mr. W. G. Doty, who was employed and was paid at the request of the Patent Department for us in Dayton; payment to F. Dunn and
150 E. F. Louiso, located in Anderson, Indiana; payments to Rector, Hibben, Davis and Macauley for every month through the year; annuities on English patents $190, and March 21st, annuities on patents $60. I cannot tell what sort of scales are covered by these patents, nor whether they relate to cylinder scales—payments to E. C. Pool, an inventor located in Pennsylvania, to S. G. Crane, employed in our Experimental Department here, and to Albert H. Meads; also certain payments to the Patent Office in connection with patent matters of the company, and an item for the assignment of a patent by Louiso; I do not know what that patent was; payments of taxes on British patents, Argentine patents, and others."

The ledger account entitled "Patent Expenses" for the year 1911 was then read into the record, as follows:

Patent Expense.

1911.			
Jan. 25.		J	50.00
24.		CD	3.00
31.		J	90.44
Feb. 1.	Salary W. G. Doty.....	CD	15.
1.	Salary F. P. Dun.....	"	100.

	6.	Myers, Cushman & Rhea	CD	5.
	8.		CD	25.
	10.	Exp. J. D. Burkholder 2/11	CD	36.94
	17.		"	32.50
	27.	U. S. Patent Office	J	.65
	28.	Rector, Hibben & Davis	J	323.56
	27.		CD	5.
Mar.	1.	Salary W. G. Doty	"	15.
		Salary F. P. Dunn	"	100.00
	4.	Annuities English Patents	CD	190.
	6.	Expenses A. D. Jr.	"	30.40
	21.	E. J. Poole Expenses	"	14.
	21.	Annuities on Patents	"	60.
	13.	Rector, Hibben, Davis & Macauley	J	265.93
	21.	Jno. D. Burkholder Sal. (15 wks.)	J	500.00
	30.	Sal. J. D. Burkholder	CD	100.
Apr.	1.	Sal. W. G. Doty	"	15.
		Sal. F. P. Dunn	"	100.
	3.	British Patent Annuities	"	65.
	13.	Sal. J. D. Burkholder	"	100.
	13.	Sal. J. D. Burkholder	"	100.
	17.	Exp. E. McGarvy	"	27.75
	20.	Sal. F. D. Burkholder	"	100.
	24.	E. C. Pool	"	200.
	27.	Sal. J. D. Burkholder	"	100.
	10.	U. S. Patent Office		.05
	14.	U. S. Patent Office		.70
	19.	Rector, Hibben, D. & Mac		307.33
May	1.	Saly. W. G. Doty	CD	15.
		Saly. F. P. Dunn	"	100.
	4.	Saly. J. D. Burkholder	"	100.
	11.	Saly. J. D. Burkholder	"	100.
151				
	18.	Saly. J. D. Burkholder	"	100.
	25.	Saly. J. D. Burkholder	"	100.

Zolg—Direct:

May	31.	S. G. Crane Exp	CD	40.40
	31.	A. H. Meads' bill	"	75.
	31.	Rector, Hibben, Davis & Mac	"	496.54
June	1.	Sal. J. D. B/	"	100.00
	1.	Sal. W. G. Doty	"	15.
		Sal. F. P. Dunn	"	100.
	7.		"	40.35
	8.	J. D. B. Sal	"	100.
	15.	J. D. B. Sal	"	100.
	19.		"	41.70
	21.	Scale purchased from E. P. Louiso	"	24.
	22.	Sal. J. D. S	"	100.
	27.	Exp. Thos. Griswold	"	16.

	30.	Rector, Hibben, Davis & Macauley bill	J	518.50
	29.	Sal. J. D. S.	CD	100.
July	11.	Com. of Patents	J	.20
	11.	Exp. Geo. H. Stacey to Chicago	J	36.85
				5,497.79

Patent Expense.

		Bro't For'd		5,497.79
July	24.	Com. of Patents	J	.05
	1.	Sal. of W. G. Doty	CD	15.
	1.	Sal. of F. Dunn	"	100.
	3.	Exp. S. G. Crane	"	26.20
	6.	J. D. S.	"	100.
	10.		"	3.40
	13.	Sal. J. D. B.	"	100.
	17.	E. F. Louiso	"	100.
	18.		"	47.34
	20.	Sal. J. D. B.	"	100.
	27.	Sal. J. D. B.	"	100.

Zolg—Direct:

Aug.	1.	Sal. W. G. Doty	CD	15.
		Sal. F. P. Dunn	"	100.
	2.	Exp. J. D. B.	"	27.53
	3.	Sal. J. D. B.	"	100.
	5.	Sal. J. D. B.	"	173.10
	10.	Sal. J. D. B.	"	100.
	11.	Sal. J. D. B.	"	57.70
	14.	Pymt. of Assignment Louiso	"	400.
	17.	Saly. J. D. B.	"	100.
	18.	Saly. J. D. B.	"	57.70
	14.	Bill Rector H. D. & M.	J	561.62
	24.	Saly. J. D. B.	CD	100.
	25.	P-yroll	"	57.70
	30.	British Tax	"	30.00
	31.	Saly J. D. B.	"	100.
	31.	R. R. Ticket & cash adv. (McCauley)	J	17.50
	31.	Com. of Patents	J	.15
	31.	Bill Rector J. D. & Mc.	J	901.81
	31.	Bills of U. S. Patent Office	J	16.85

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Sept.	1.	Payroll	CD	57.70
	6.	Saly. F. Dunn	"	100.
	7.	Saly. J. D. B.	"	100.
	8.	Payroll	"	57.70
	11.	Argentine Tax	"	17.
	12.	Taxes G. & F.	"	80.

	14.	Salary J. D. B.	CD	100.
	15.	Payroll	"	57.70
	21.	Saly. J. D. B.	"	100.
	22.	Payroll	"	57.70
	28.	Saly. J. D. B.	"	100.
	29.	Payroll	"	57.70
	21.	Bill a/c Rector, H. D. & Mc.	J	737.36
Oct.	2.	Saly. F. Dunn	CD	100.
	2.	Saly. W. F. Harris	"	100.
	3.	Underwriters' Laboratories	"	5.
	3.	Marks & Clerk bill	"	200.52
	5.	Saly. J. D. B.	"	100.
	6.	Payroll	"	57.70
	9.	French Tax	"	42.50
	10.	Cash Voucher	"	.91
	12.	Saly. J. D. B.	"	100.
	13.	Payroll	"	57.70
	14.	Contract F. Dunn	"	500.00
	19.	Saly. J. D. B.	"	100.
		F'w'd		12,083.63

Zolg—Direct:

Patent Expense.

Oct.	20.	Brought Forward		12,093.63
	20.	Payroll	CD	57.70
	26.	Saly. J. D. B.	"	100.00
	27.	Payroll	"	57.70
	27.	Exp. F. P. Dunn	"	12.00
	27.	Two Certificates	"	.80
	30.	British Tax #20619	"	60.00
	1.	Com. of Patents' bill	J	4.65
	31.	Sept. Bill Rector H. & D.	J	311.14
	31.		PJ	4.60
Nov.	1.	Saly. F. P. Dunn	CD	100.00
	1.	British Tax	"	5.00
	2.	Saly. J. D. B.	"	100.00
	3.	Payroll	"	57.70
	9.	Saly. J. D. B.	"	100.00
	10.	Payroll	"	57.70
	16.	Saly. J. F. B.	"	100.00
	17.	Payroll	"	57.70
	23.	Saly. J. D. B.	"	100.00
	24.	Exp. J. D. B.	"	19.25
	24.	Payroll	"	57.70
	28.	J. D. B. Expenses	"	15.25
	29.	Saly. J. D. B.	"	100.00
	15.	U. S. Com. of P. Oct.	J	1.70
	20.	Rector, H. & D. bill 11/1	J	522.22

	29.	Com. of Patents' Bill	J	1.60
Dec.	1.	Saly. F. P. Dunn	CD	100.00
	1.	Payroll	"	57.70
	7.	Saly. J. D. B.	"	100.00
	8.	Payroll	"	57.70
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	14.	Saly. J. D. B.	"	100.00
	15.	Payroll	"	57.70
	21.	Saly. J. D. B.	"	100.00
	22.	Payroll	"	57.70
	26.	Subscription Official Gazette	"	5.00
	27.	Expense J. D. B.	"	108.40
	28.	Saly. J. D. B.	"	100.00
	29.	Payroll	"	57.70
	15.	Bill Rector H. & Davis	J	728.08
				15,728.02
Oct.	11.	Vulcar Exp.	J	150.36
Dec.	30.	Loss & Gain	J	15,577.66
				15,728.02

"The next item, 'Postage,' covers the postage from Toledo, but does not include postage on Advertising; this postage was included under the head 'Advertising' in Miscellaneous Selling."

"The next item, 'Recording Orders' covers the recording of orders in the various states—that is, having them acknowledged, and having them recorded in order to protect our lien. This account refers to all kinds of scales. I have no way of separating those referring to the cylinder scales. For the next item, 'Rents' the total is $1,700 for the year 1911, and the next item, 'Taxes' totals $4,150.28. The next item, 'Telephone and Telegraph' includes the tolls to Canada as well as in the United States."

"The next item on this page, page 23 of the Account, 'General Expenses' covers such entries as Donations, Merchantile Reporting Service, Car Tickets, Petty Cash Vouchers, etc., and totals for the entire year $3,198.30."

"All of the various accounts grouped under 'Commercial and Selling Expenses' on page 23 of the Account, total $373,855.73. Of this amount we have charged against cylinder scales sold in the 1911 period, $108,611.28. I get this figure by finding the proportion which these sales of cylinder scales for the period bore to the total net sales for the year. I obtained the figures for the total United States sales by combining the figures for United States sales on page 90 of the ledger $1,288,012.58 gross sales; total sales of Second-hand Scales on page 91 of the ledger, $18,466.79, and sales of Rebuilt Toledo scales, page 89, $709, and Rebuilt Scale Sales on page 95 $75,653.56, giving a total of gross sales of $1,382,832.93.

154 From this I deducted Toledo scale charge backs, page 96, $116,085.31; Exchange scale allowance, page 97, $99,047.24; Toledo scale allowance, page 98, $29,051.47, and Special Allowance,

pages 99 and 100, $22,096.22, totaling $266,280.25, leaving a net figure of $1,016,552.68. Then I took these same figures for the first two months of the year 1911 and deducted them from the grand total so as to compare with the same period in which the sales listed in this account were sold. I used for two months U. S. sales $203,551.62; Second-hand $4,938.50; Rebuilt Scale Sales $9,020.51; Toledo Scales charged back $22,306.18; Exchange scale allowance, $15,719.91; Toledo Scale allowance, $2,686.26, and Special allowance of $3,738.70. I added the first three items together, deducted the remainder from this total, and then deducted the result from the net sales above. The net figure for the sale of all scales during this account period was $943,493.10. By dividing this figure of total sales into the figure for Commercial and Selling Expense of $373,855.73 listed in this account, we obtained the percentage, 39.6%. That percentage applied to the total cylinder sales for the period. $274,270.90, gives the figure $108,611.28, which I have used as the proportion of Commercial and Selling Expenses applicable to the cylinder scales sold in this period."

"I took no account of the foreign scales sold during the year 1911, nor of the Canadian scales sold during 1911, in the Account Furnished by Defendant. Foreign scales sold from Toledo in 1911 were $29,514.39 for the year, and I took no account of scales sold in Canada from Toledo. My judgment is that allowing for anything connected with foreign scales and Canadian that $108,611.28 is a reasonable allowance upon all cylinder scales sold in ten months of 1911 for commercial and selling expense."

"Referring now to the first item on page 25 of the Account 'Commissions' I have used the figure $81,617.17 as the commissions applicable to the particular cylinder scales sold and listed in the preceding pages of the Account. These commissions were taken directly from the Customers' Ledgers, and represent the commissions allowed. I don't know whether they were all paid or not. Our account showing individual items for payments of commissions
155 is carried on the Agents' Ledgers, and a recapitulation of the cash disbursements for such commissions is entered monthly on the general ledger. On the general ledger for 1911 we have two commission accounts, one Agents' Commissions $351,006.87, on page 220, and one District Managers' Commissions, $6,420.68, on page 21, and the total is $357,427.55."

"The item, 'Losses on Customers' Accounts,' on page 25 of the Account Furnished by Defendant, includes Canadian losses as well as losses in the United States, and the same can be said of the next item, 'Losses on Agents' Accounts.' "

"Only a proportional amount of the ledger figure, 'Depreciation on Buildings' has been charged to the cylinder scales sold in the period."

"In compiling the next item, 'Interest on Capital Invested,' we took our net worth as the capital invested, arriving at the amount by taking the difference between our total assets and liabilities, not including capital stock. Thus we included all liabilities other than

capital stock, as bills payable, bonds, and accounts payable. We included patents as assets at $250,000, an arbitrary figure that has been used on the books. The rate of interest taken on the invested capital is 5%."

(Witness here produces the vouchers of the Litigation and Legal Expense Account which were requested by counsel for complainant. These vouchers were read into the record as follows:

"The first voucher produced corresponds to the item of May 31st, 1911, in the Litigation Account, page 175 of the ledger, as follows:

Albert H. Meads,
Attorney at Law,
Chamber of Commerce Building,
Chicago.

May 23, 1911.

Toledo Computing Scale Company to Albert H. Meads, Dr.

1910.			
December 8-10.	To cash paid expenses of trip to Cinicinnati and Indianapolis in matters of Cincinnati case, Angldile and Anderson Tool Company cases	$30.85	(Litigation.)
1911.			
March 15-17.	To cash paid expenses of trip to Detroit in matter of Jones & Sons case	23.35	(Litigation.)
April 3-6.	To cash paid expenses of trip to Columbus, Ohio on scale bill	30.15	(Gen. Exp.)
April 9-12.	To cash paid expenses of trip to Toledo, conference with Mr. Brown in Cincinnati case and to Columbus, Ohio on scale bill	30.45	(Gen. Exp.)
April 17-20.	To cash paid expenses of trip to Columbus, Ohio	29.50	(Gen. Exp.)
April 24-28.	To cash paid expenses of trip to Indianapolis on argument of demurrer in Angldile case, Columbus, Ohio, Youngstown, Ohio, long distance telephones, telegrams, etc.	52.50	(Litigation.)
April 28.	To cash paid stenographer's fees on extra copies of pleadings in Cincinnati and Indianapolis cases	3.60	(Litigation.)
May 2-4.	To cash paid expenses of trip to Columbus, Ohio	28.25	(Gen. Exp.)
May 14-16.	To cash paid expenses of trip to Detroit and Toledo	20.85	(Litigation.)
	Total Disbursements	$249.50	

1910.			
November and December.	To various appearances in court in trial of case of City against Scheer Brothers involving accuracy of Toledo scale, obtaining dismissal of count as to inaccuracy of scales (pro rata share of charges) . .	15.00	(Legal Exp.)
December 8-10.	To services trip to Cincinnati and Indianapolis in matter of Cincinnati argument of exceptions to answer in Cincinnati case and pleading in Anderson and Angldile cases	100.00	(Litigation.)
157	— tion of special demurrer in Angldile case and brief in support of same	75.00	(Patent Exp.)
1911.			
March 15-17.	To services in matter of trip to Detroit for trial of Jones & Sons case, interview with witnesses, etc.	50.00	(Litigation.)
April 3-6.	To services in matter of trip to Columbus, Ohio	100.00	(Gen. Exp.)
April 9-12.	To services in matter of trip to Toledo for conference with Mr. Brown as to supplemental answer in Cincinnati case and trip to Columbus, Ohio on scale bill	100.00	(Litigation.)
April 17-20.	To services in matter of trip to Columbus, Ohio	100.00	(Gen. Exp.)
April 24-28.	To services in matter of argument of demurrer in Angldile case at Indianapolis and trip to Columbus on scale bill	200.00	(Litigation.)
April 28.	To services in matter of preparation of supplemental answer in Cincinnati case	50.00	(Litigation.)
May 2-4.	To services in matter of trip to Columbus	75.00	(Gen. Exp.)
May 14-16.	To services in matter of trip to Detroit in trial of Jones & Sons case . .	50.00	(Litigation.)
May 17.	To services to date in matter of taxes, preparation of schedule, filing same, etc.	5.00	(Leg. Exp.)
	Total Services	$920.00	
	Total Amount Due	$1,169.50	
	Received Payment.		

158 "The plaintiff next offered and read in evidence the Litigation Account on page 175 of the ledger, as follows:

Litigation.

1911.

Jan.	25.		J	25.00
Feb.	28.	Rector, Hibben & Davis	J	58.05
Mar.	21.	A. D. Jr. Expenses Detroit	CD	10.00
	13.	Rector, Hibben, Davis & Macauley	J	250.00
Apr.	19.	Rector, Hibben, Davis & Macauley	J	119.10
May	31.	A. H. Mead's bill	J	681.15
Oct.	25.	Bill C. Martindale	CD	50.00
	31.	Bill Fish, Richardson, H. & N.	J	121.56
Nov.	21.	Rector, H. & D. Bill 11/1	J	367.00
				1,681.86
Dec.	30.	Loss & Gain	J	1,681.86
				1,681.86

The witness produced a voucher, a bill of Rector, Hibben, Davis and Macauley of February 1st, 1911, and said that it corresponded to the entry of date February 28th in the Patent Expense Account, and said the notations show how the bill has been distributed upon the books as it is charged. Said bill was as follows:

Law Offices of

Rector, Hibben, Davis & Macauley,

1901 McCormick Building,

193 Michigan Avenue,

Chicago.

Feb. 1, 1911.

Toledo Computing Scale Company, Toledo, Ohio, to Rector, Hibben, Davis & Macauley, Dr.

Disbursements.

1910.

Dec.	1. To telegram (Nov. 7) to Indianapolis	$.55	Lit.
	1. To telegram (Nov. 8) to Washington	.50	
	7. To express from Washington	.35	
	10. To express to London	.35	
	10. To cash, paid British associates on account of Austrain application on Cylinder Scale and Fan Shaped Scale	66.00	

	10. To Cost of drawings for above Austrain cases	20.25	
	22. To Examiner's fees in re prima facie proofs in suit at Chicago against Moneyweight Company	2.50	Lit.
159			
	30. To copies of patents	.10	
	31. To final government fee, Pool scale application	20.00	
1911.			
Jan.	5. To telegram to Toledo	.27	
	6. To telegram to Toledo	.32	
	6. To copy of Court of Appeals opinion, Moneyweight case	5.00	Lit.
	31. To copy if patent	.05	
	31. To cost of weekly watch British patents in Dec. 1910	.37	
1910.	Services.		
Dec.	—. To services in re suit against Moneyweight Co. on cylinder scale patent, including preparation and service of notice for prima facie proofs, review preliminary to introducing proofs, and the taking of testimony and introducing exhibits to make out a prima facie case	50.00	Lit.
Dec.	1. To further services in Stimpson matter, including written report to Toledo Co. Regarding infringement	5.00	
	1. To services in re Sholty application covering auxiliary weight, examination of patents cited and preparation of amendment	10.00	
	9. To services in re proposed label or trade mark for new process vulcanizing machine, including report thereon to Toledo	5.00	Vulc.
	10. To services in re Austrain application on fan shaped and cylinder scales, preparation of application papers and instructions to foreign associates	50.00	
	28. To services, consideration of Pool application and patent references cited against it and report to Toledo on advisability of completing purchase of same	5.00	

1911.

Dec.	29.	To services in re DeVilbiss application on raised pendulum scales, consideration of references cited, preparation of amendment, etc.	20.00
	30.	To services in re filing of foreign applications on raised pendulum construction, written report to Toledo, Ohio, etc.	5.00
	30.	To services in re Swedish application on Cylinder Scale, review of references cited by Swedish office and letter of instructions to foreign associates	10.00
160			
Jan.	4.	To services in re DeVilbiss Tare Device application, examination of patents cited, and preparation of amendment	10.00
	9.	To same in re DeVilbiss application No. 463,041	10.00
	9.	To same in re Wetzel application No. 345,801	10.00
	13.	To same in re DeVilbiss application No. 529,925	10.00
	17.	To same in re Englehardt application	10.00
	17.	To same in re Duquette application	10.00
	17.	To same in re Hansen application	10.00
	17.	To same in re De Vilbiss application No. 255,650	10.00
	25.	To same in re Sholty application No. 319,920	5.00
	26.	To same in re De Vilbiss application on printing scale	25.00
			$386.61

Entry:

Chg. Litigation	58.05
Vulcanizer	5.00
Patent Exp.	386.61

Credit R. H. D. & Mac. G./L. 386.61.
Feb. 28, 1911.

"The next voucher is the bill of Rector, Hibben, Davis and Macauley corresponding to the March 13th entry on Patent Expense Account. The notations show its distribution."

Chicago, March 1, 1911.

Toledo Computing Scale Company, Toledo, Ohio, to Rector, Hibben, Davis & Macauley, Dr.

Disbursements.

1911.		
Feb. 3.	To telegram to New York in re New York suit	$.50
4.	To telegram to New York in re New York suit	.50
7.	To telegram to Toledo	.48
9.	To telegram to Toledo	.34
Feb. 15.	To certified copies of De Vilbiss patent.	1.60
22.	To cash paid foreign agents for services and expenses to Jan. 14, 1911, in re British application on Logan Beet Sugar Scale, including provisional application, etc.	18.50
22.	To cash paid foreign agents (to Feb. 2, 1911) for services and expenses in re Swedish application No. 106,110, Norwegian application No. 26,391	
161	and Danish application No. 1192, all relating to fan scale	34.71
22.	To cash paid foreign agents for services and expenses to Jan. 10, 1911 in re Norwegian application on cylinder scale	7.50
22.	To cash paid foreign agents for services and expenses to Aug. 29, 1910, in re British application No. 24,485/09 relating to Wear removable weight.	10.00
22.	To cost of cablegram to Toledo Company on Jan. 7th in re Austrian application covering fan and cylinder scale	1.25
22.	To cash paid foreign agents for balance of charges for translating and filing Austrian application No. 6633 on fan scale and Austrian application No. 7214 on cylinder scale	32.85
22.	To same in re Argentine application No. 10,040 on cylinder scale	66.50
23.	To government fee on appeal to Board of De Vilbiss application No. 458,570	10.00
28.	To copies of patents	.20

Services.

Feb.	1.	To retainer and preliminary services in defence of suit at New York on Bain & Crane patent, correspondence with New York counsel and arranging for entry of appearance Lit.....	100.00
	2.	To services in re Drew application No. 319,344 including preparation of amendment	10.00
	2.	To same in re Sholty application No. 330,465	10.00
	3.	To services in re Burkholder applications, consultation of Mr. De Vilbiss at Chicago with Messrs. Rector and Macauley concerning advisability of purchasing said applications.....	50.00
	18.	To services, preparation of contract of employment of Burkholder by Toledo Company	25.00
	18.	To services in re De Bilbiss application No. 538,060, including preparation of amendment	10.00
	23.	To same in re De Bilbiss application on Adjustment Segment Connection...	10.00
	27.	To same in re Ganzhorn & Mueller application No. 238,426	10.00
	27.	To same in re De Vilbiss application No. 186,686	15.00
	28.	To same in re De Vilbiss application No. 180,595	15.00
	28.	To same in re De Vilbiss application No. 332,932	15.00
162			
	28.	To services, preparation of assignment of Burkholder Canadian patent on dash pot	5.00
	28.	To service to date in suit of Toledo Co. v. Angledile Co., including preparation for introduction of prima facie proofs .....Lit.	50.00
Feb.	28.	To services to date in suit of Toledo Co. v. Anderson Co. including preparation for introduction of prima facie proofs	25.00
	28.	To services to date in New York suit, reviewing files for materials to use in answer, examination of bill of complaint, correspondence with New York associate and drafting of answer .....Lit.	75.00
			$609.93

Credit.

Feb. 22. By amount already paid on Feb. 21, 1910, on account of foreign items listed in this bill.... 94.00

Balance $515.93

Lit. 50
25
75
100

250.00

Voucher made 3/13. J./E.—General Journal 3/13/11.

"The following bill of April 1st corresponds with the item of April 19th, $307.33, and the distribution of the bill is shown opposite the items."

Chicago, April 1, 1911.

Toledo Computing Scale Company, Toledo, Ohio, to Rector, Hibben, Davis & Macauley, Dr.

Disbursements.

1911.			
Mar. 22.	To telegram to Toledo	$.36	
22.	To telegram to Pittsburg.....	.40	
22.	To telegram to Detroit	.42	Patents.
29.	To expenses of Washington trip....	61.10	
31.	To copy of patent	.05	

163 Services.

Mar. 9.	To services in re De Vilbiss application on normally raised pendulum, preparation of brief in support of appeal to Board of Examiners-in-Chief, trip to Washington oral argument of appeal before Board, including also numerous interviews with the Primary Examiner regarding said application and appeal..	$150.00	Patent.
10-15.	To services of Mr. Rector in re suit of Computing Scale Company vs. Toledo Company, at Chicago on Smith patent, correspondence with Toledo, search for and collection of Dayton and Moneyweight Com-		

		panies' advertisements, consultation with Mr. Theobald, preparation of affidavit and attendance on Court in opposition to defendant's motion for leave to introduce proofs.....	50.00 Lit.
	17.	To services in re De Vilbiss application on Conical Chart, consideration thereof and preparation of amendment	5.00 Patent.
	23.	To same in re Sholty application No. 375,720	10.00 Patent.
	28.	To same in re Sholty application No. 330,465	15.00 Patent.
	28.	To same in re Sholty application No. 252,230	20.00 Patent.
	29.	To same in re Wear application No. 209,395	15.00 Patent.
	31.	To same in re Dunn application No. 569,191	20.00 Patent.
	30.	To same in re Duquette application No. —	10.00 Patent.
	31.	To services to date in suit of Toledo Company v. Agnldile Company, including introduction of prima facie proofs, revision of transcript of same and filing them with Clerk of Court	25.00 Lit.
Mar.	31.	To services to date in suit of Toledo Company vs. Anderson Company, including preparations for introducing prima facie proofs, preparing and service notice on defendant's attorney, correspondence with him, etc.	25.00 Lit.
	31.	To services to date in suit of Computing Scale Company and Hayward v. Toledo Company at New York, including completion of answer to bill of complaint and arranging for filing thereof with clerk	25.00 Lit.
			$432.33

164 Credit.

Mar.	17.	By cash received from Clerk of Court at Toledo for costs on dismissal of suit of Computing Company vs. Toledo Company at Toledo	5.90 Lit.
		Balance	$426.43

Chg. Litigation 119.10
Chg. Patent Ex.... 307.33J/E 4/20/11.

Credit R. H. D. & Mac G./L. 426.43.

"This bill is all in the Patent Expense Account as of May 31st, as follows:

McKittridge.
Chg. to Patent Expense & file in the Legal Bill file.

May 1, 1911.

Toledo Computing Scale Company, Toledo, Ohio, to Rector, Hibben, Davis & Macauley, Dr.

Disbursements.

1911.		
Apr.	7. To telegram to Toledo	$.30
	8. To telegram to Toledo	.30
	12. To cash paid Clerk of Court at New York as deposit for costs in suit of Computing Scale Co.	15.00
	22. To government fee for recording Burkholder assignment in Canada	2.00
	22. To balance of Mr. Macauley's expenses on trip to Toledo, expenses $18.90 less $10 advanced by Toledo	8.90
Apr.	29. To copies of patents	.85
	29. To cost of British patents on Weekly Watch in January	1.11
	29. To same in month of March	.37
	29. To cost of search at Paris as to French patent No. 407,619	2.35
	29. To copy of British patents	.36

Services.

Apr.	1. To services of Mr. Rector to date in suit on Smith patent at Chicago, examination of patents and attendance on complainant's prima facie proofs (Two sessions)	75.00
	1. To services in re De Vilbiss application No. 318,540, consideration of references cited and preparation of amendment and argument.....	15.00
	7. To same in re De Vilbiss application No. 380,125	10.00
165	10. To same in re De Vilbiss application No. 529,925	15.00

	11.	To same in re Wetzel application No. 321,369	10.00
	12.	To same in re Ganzhorn & Mueller application	5.00
	13.	To same in re Church application No. 563,683	10.00
	13.	To same in re Pool lens system application	10.00
	13.	To same in re De Vilbiss application No. 577,693	10.00
	24.	To same in re Chapman application..	10.00
	15-19.	To services, preparation of digest of pending scale applications, trip to Toledo and three days' time spent there in conference with Messrs. Theobald, Hapgood, Reeves and Wetzel in regard to scale inventions, and also including conferences with Messrs. Theobald, Bancroft and Kirk in regard to vulcanizer	150.00
Apr.	20.	To services in re repairing of Dayton scales, opinion and advice on subject, etc.	20.00
	25.	To services, preparation of Burkholder application on Check Device	50.00
	29.	To services during month in suit of Toledo Co. v. Moneyweight Co., on cylinder scale patent, including attendance on two different days at office of defendant's attorneys, in connection with deposition of Mr. Anderson subpœnaed by defendant;; also at your Chicago agency with Mr. Anderson	75.00
		May 31, 1911	$496.54

The following bill is all charged in the Patent Expense Account as of June 30th, 1911.

Chicago, June 1, 1911.

Toledo Computing Scale Company, Toledo, Ohio, to Rector, Hibben, Davis & Macauley, Dr.

Disbursements.

1911.			
May	3.	To drawings in Re Swedish case....	$10.00
	5.	To express to Toledo, Burkholder application	.30
	13.	To expenses Dayton trip in suit of Toledo Co. v. Moneyweight Co. ..	19.50

	18.	To cash paid London associates in re Danish application, for services in prosecution of case to Feb. 27, 1911, preparation of amendments and new claims, etc.	18.00
166	18.	To same in re Swedish case.....	9.00
	31.	To copies of patents.....	.20
	31.	To correction of Ganzhorn & Miller patent drawings	1.50

Services.

May	13.	To services to date in re suit against Moneyweight Co. on cylinder scale patent including preparation for testimony at Dayton, trip to and from Dayton, attending at Dayton (four days) upon examination of defendant's witnesses	250.00
	31.	To further services to date in same case, looking up authorities on subject of amending answers, attendance on Court and opposing defendant's motion to amend.....	50.00
	16.	To services in re application No. 180,595, examination of references cited, and preparation of amendment	10.00
	16.	To same in re application No. 186,686	10.00
May	17.	To consultation in re raised pendulum matter with Messrs. Rector and Davis, and report to Toledo..	30.00
	18.	To services in re Ganzhorn & Mueller application preparation of amendment	5.00
	18.	To services in Bancroft Vulcanizing case, examination and consideration of references cited, and letter to Kirk suggesting alterations and new claims	15.00
	24.	To services, letter of advice concerning maintenance of prices in Missouri and elsewhere upon vulcanizer	15.00
	24.	To services in re De Vilbiss application No. 529,925, examination of references cited and preparation of amendment	10.00

29.	To same in re application No. 590,351 including rewriting of specification and claims and presenting entire case in revised form.....	40.00	
31.	To services in re Church application, preparation of amendment, etc...	5.00	
31.	To same in re Wetzel application No. 321,369	10.00	
31.	To same in re Wear application No. 209,305	10.00	
		$518.50	

Chg. Patents.
Entered G./J.
W. A. Z.
June 31, 1911.
H. A. K.

167 The following bill corresponds to the entry of $562.62 of August 14th. Of the whole bill, $974.02, $562.62 is charged to Patent Expense, and the rest to the Vulcanizer Account.

Chicago, July 1, 1911.

Toledo Computing Scale Company, Toledo, Ohio, to Rector, Hibben, Davis & Macauley, Dr.

Disbursements.

1911.				
June	1.	To telegram (May 23) to Toledo...	.30	
	1.	To telegram (May 23) to Toledo...	.34	
	1.	To telegram (May 27) to Toledo...	.30	
	7.	To telegram (May 31) to Toledo...	.30	
	6.	To expenses Macauley's trip to Toledo	22.25	
	9.	To first government fee, Burkholder scale application	15.00	
June	19.	To final government fee Wetzel application on Removable Weight..	20.00	
	22.	To cost of copies of British patents on weekly Watch	.74	
	22.	To copies of German patents.....	.51	
	7.	To telegram to Pittsburgh.....	.40	
	12.	To telegram to Pittsburgh.....	.40	
	12.	To telegram to Washington as to drawings for foreign applications on Vulcanizer	.80	Vulcar.
	19.	To additional telegram in same matter	.92	
	24.	To cost of tracings of two drawings for Bancroft foreign cases.....	1.50	Vulcar.
	16.	To copies of 27 patents.....	1.35	
	20.	To copies of Burkholder drawings..	.60	

	29. To government fee for recording five deeds from Burkholder.....	10.00	
	30. To copies of patents.....	.55	
	22. To filing and assignment fee in re Bancroft Canadian application on Vulcanizer	22.00	Vulcar.
	22. To cash paid London associates on account of foreign applications on Bancroft Vulcanizer	150.00	Vulcar.
	26. To cash paid Italian consul for ligalization (Vulcanizer)	2.00	Vulcar.
	29. To *filan* government fee, Reeves application	20.00	
	8. To express to Washington, Burkholder application	.35	
June	19. To express from Washington, Bancroft *F*ulcanizer drawings.....	.35	Vulcar.
	15. To blue prints for use in Bancroft foreign cases	.75	Vulcar.
168	22. To express on four scales to Toledo..	6.06	
	27. To express on two scales to Toledo..	1.25	
	20. To express on scale to Washington, in Shock matter	1.00	
	25. To ad. for Toledo Company in Chicago Tribune	4.00	

Services.

June	1. To services, attending at office of defendant's attorneys in the taking of testimony in Toledo v. Moneyweight Company on Cylinder Scale patent	25.00	
	1. To services in re Sholty case No. 336,465, examination of references, preparation of amendment etc....	10.00	
	1. To same in re Pool Lens application.	10.00	
	2. To trip to Toledo and consideration of and advice upon general patent matters and completed and prospective inventions, including conferences with Messrs. Theobald, Wetzel, Hapgood, etc.....	50.00	
	7. To services, inquiring into matters relating to Canadian patents, and letter to Mr. Kelley of Toledo....	10.00	
	7. To services in re Burkholder Dash pot application, consideration of references, preparation of extensive amendment including rewriting of specification and claims, and preparation of argument.....	35.00	

June16-19. To services in re Shock matter and public use proceedings including inspection of scales at The Fair, Chicago, examination of correspondence, prints and sample of Shock scale and report upon same, preparation of public use papers and affidavit, conference with Mr. Anderson, etc. 50.00

13-15. To services, review of prior art in re Toledo Co. v. Anderson Co. suit, preparation for and taking of prima facie testimony, including previous correspondence with Mr. Stacey 100.00

16. To services, preparation of assignments in Bancroft and Mingle applications, and correspondence relating thereto 10.00

16. To services of Mr. Rector and Mr. Macauley in Lancaster Co. infringement, examination of correspondence and patents, etc..... 15.00

20. To services in re working of British patents by Avery Company, consideration of subject and letter of advice 10.00

169 26. To services, preparation of opinion in re Louiso Candy and Druggists' scale 25.00

27. To services in re Mingle application No. 566,566 on Indicating Finger, preparation of amendment including rewriting of specification and claims, etc. 30.00

16. To services, consideration of foreign correspondents' report on action of Examiner in Austrian applications on Fan and Cylinder Scales, consideration of references and letters of instructions as to further prosecution of cases 10.00

28. To services, preparation of Wetzel application on cylinder scale, involving various new features and details 75.00

June 22. To services to date in re applications for patents on Banroft Vulcanizer in Great Britain, France, Germany, Italy, Austria & Denmark, including revision and consolidation of

	subject matter of the U. S. applications into a single application, instructions and correspondence concerning preparation of drawings at Washington, correspondence and advice concerning other proposed foreign applications, and letter of instructions to foreign agents analyzing subject matter of invention, etc.	175.00 Vulcar.
22.	To services, preparation of application for patent in Canada on Vulcanizer J/E Aug. 14, 1911.	50.00 Vulcar.
		$974.02

The bill of August 1st corresponds to the entry of August 31st in the Patent Expense Account.

Chicago, Aug. 1, 1911.

Toledo Computing Scale Company, Toledo, Ohio, to Rector, Hibben, Davis & Macauley, Dr.

Disbursements.

1911.			
July	10.	To cost of drawings for Bancroft foreign applications on Vulcanizer	25.12 Vulcar.
	10.	To telephone toll to Mr. Theobald at Toledo	1.65
	13.	To telephone toll to Mr. Macauley at Elkhart	.60
	15.	To telegram to New York in suit of Computing Scale Co.	.53
	17.	To telegram to Macauley in Anderson suit	.25
170			
	17.	To expenses of trip to Toledo in Anderson Co. suit	27.75
	17.	To cash paid New York counsel for services in New York suit of Computing Scale Co.	50.00
	17.	To expenses to Indianapolis on exhibit scale	1.25
	18.	To telegram to Macauley in re Louiso application	.45
	18.	To telegram to Macauley in re Louiso application	.39
	20.	To telegram to Macauley at Indianapolis in Anderson suit	.63
	22.	To telegram to Macauley at Indianapolis in Anderson suit	.25

	26. To Examiner's fees in taking of Stacey deposition	22.40
	26. To drawings for Wetzel case	20.00
July	26. To expenses of trip to Anderson and Indianapolis, Anderson suit	55.25
	27. To telegram to Wawasee	.55
	28. To government fee, recording two Louiso assignments	4.00
	31. To copies of patents	.30
	31. To charge of London associates for Weekly Watch of Scale patents for year ending Juen, 1912	24.50
	31. To copy of Austrian patent	.51
	31. To copy of British patents	.55

Services.

July	7-24. To services in suit of Toledo Co. v. Anderson Co. preparation for and attending taking of defendant's proofs at Toledo, Elkhart, Chicago and Indianapolis, etc.	550.00
	31. To services to date in suit against Moneyweight Co. on cylinder scale patent, including attendance upon further testimony introduced on behalf of defendants at Chicago on July 25 and 26	75.00
	31. To services in re De Vilbiss application No. 529,925, including preparation of letter in case	5.00
	31. To services, report upon Shock scale application and claims	25.00
July	31. To services in re employment of engineer at Toledo inserting ad in Chicago Tribune in June, time and services interviewing numerous applicants for position, correspondence with Toledo concerning them, subsequent consultation (July 15) between Mr. Rector and Mr. Macauley and Mr. Burkholder concerning putting Burkholder in charge of inventions department	35.00
		$926.93

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Crg. Vulcar 25.12.
Chg. Patent 901.81.
Aug. 30, 1911.

The following bill corresponds to the entry of September 21st, $737.36, and the rest of the bill is charged to the Vulcanizer.

Chicago, Sept. 1, 1911.

Toledo Computing Scale Co., Toledo, Ohio, to Rector, Hibben, Davis & Macauley, Dr.

Disbursements.

1911.		
Aug 4.	To expense of Dayton trip in Moneyweight cases	25.00
4.	To express on papers from Dayton	.35
14.	To telegram to Washington in Moneyweight case	.80
14.	To express to Toledo, two boxes	2.25
14.	To telegram from Washington in re testimony	.50
7.	To expenses of Indianapolis trip in Anderson case	41.50
16.	To express to Toledo on two applications	.35
19.	To telegram from Davis in Moneyweight case	.50
19.	To final government fee on Drew Indicator application	20.00
23.	To expenses of New York trip in Moneyweight case	80.00
31.	To cost of British patents on the weekly watch in July	1.11

Services.

Aug. 1, 2 & 3	To time and services to date in suit against Moneyweight Company on De Vilbiss cylinder scale patent including preparation for testimony at Dayton, Ohio, trip to Dayton and attendance there upon examination of witnesses for defendant, also reviewing Ludlow's deposition and preparing objections to exhibits offered in connection therewith	150.00
Aug. 5.	To time and services to date in Anderson suit, including trip to Indianapolis, attendance on defendant's proofs and cross-examination of their witnesses	250.00
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8.	To services in re Hapgood application No. 572,473, consideration of references cited, and preparation of amendment and argument	10.00

	8.	To same in re Hapgood application No. 572,474	10.00
	8.	To same in re Wetzel application on Electric lighted Scale	10.00
	12.	To services, preparation of patent application covering Hapgood details of Cylinder Machine	50.00
	14.	To services in re working to protect British patents, examination of authorities and advice on subject, and also letter to Toledo Company in re Shock application on scale.	10.00
	16-21.	To time and services in suit of Computing Scale Company against Toledo Company on Smith patents, including preparation for testimony at New York, trip to New York and attendance there upon examination of complainant's witnesses	75.00
	22.	To services in re Bancroft application on Vulcanizer, consideration of references cited, and preparation of amendment and argument	15.00 Vul.
			$752.36

Chg. Patent Ex. 737.36.
Chg. Vulcar, Ex. 15.00.
Cr. Rector H. & D. 752.36.

The whole of the following bill is charged to the Patent Expense Account:

Chicago, Oct. 2, 1911.

Toledo Computing Scale Company, Toledo, Ohio, to Rector, Hibben, Davis & Macauley, Dr.

Disbursements.

1911.			
Sept.	2.	To telegram to New York in Hayward suit	.50
	5.	To drawings for patent application on Hapgood Floating Pendulum	21.00
	9.	To final government fee Hansen Scale application	20.00
	15.	To final government fee Englehardt Appln. No. 301,888	20.00
Sept.	15.	To final government fee De Vilbiss Appln. No. 255,650	20.00
	15.	To final government fee De Vilbiss Appln. No. 538,060	20.00
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	19.	To cost of drawings for Church foreign cases	3.67
	21.	To first government fee, Wetzel application.	15.00

21.	To first government fee, Hapgood application	15.00
18.	To postage on Hapgood application to Toledo	.26
21.	To express to Washington on Wetzel and Hapgood applications	.35
30.	To copies of patents	.20
30.	To copies of British patents on Weekly Watch	1.11
30.	To copies of British patents.. L	.55
26.	To cash paid Washington correspondent for additional validity search in re Reissue patent No. 11,536 and patent No. 597,300 in suit of Computing Scale Co	50.00
25.	To government fees recording Hapgood and Wetzel assignments	2.00
27.	To government fee recording assignment to Reeves	1.00
30.	To telegram to J. L. Theobald in New York suit	.50

Services.

Sept.	To services in re Hayward suit at New York on Electric Illumination, examining deposition of John Theobald, and advising New York associate	25.00
Sept.	To services in re Computing Scale Co. suit on Smith patents, attending testimony at Chicago, review of papers and prior patents collected on previous suits on same patents, and instructing Washington associates as to further search of the prior art.	50.00
	To services in re suit of Toledo vs. Moneyweight Co. on cylinder Scale patent, attending taking of testimony on behalf of defendant at Chicago	25.00
16.	To services in re Dunn application on Canday Scales, including preparation of assignment from Toledo Co. to Reeves	10.00
19.	To services in re Argentine and Brazil trademark and marking Toledo Electric Scale with name "Toledo," letter of advice, etc.	10.00
		$311.14

Chg. Patent Expense, Oct. 31, 1911.

174 Of the following bill of $890.32, $367 are put into the Litigation Account, and $522.22 into the Patent Account. The remainder, $1.10, into the vulcanizer.

Chicago, Nov. 1, 1911.

Toledo Computing Scale Company, Toledo, Ohio, to Rector, Hibben, Davis & Macaulay, Dr.

1911. Disbursements.

Oct.	6. To copies of Hapgood drawings, case No. 651,045	.90	
	6. To copies of Wetzel drawings, case No. 651,071	.90	
	7. To expenses of trip to Indianapolis in Anderson suit	31.25	Lit.
	9. To final government fee on De Vilbiss Walking Beam Scale application	20.00	
	10. To final government fee, Sholty Ball Placer and Remover	20.00	
	10. To final government fee, De Vilbiss Conical Chart Scale	20.00	
	11. To government fee for recording Fitch assignment	2.00	
	23. To cost of drawings for Brazilian application on Wetzel Cylinder Scale	6.85	
	24. To expenses of trip to Buffalo in Anderson suit	35.75	Lit.
	24. To copies of patents	.45	
	24. To legalization of Danish papers, Bancroft application, Vulcar	1.10	
	30. To postage on Brazilian application	.38	
	30. To cash paid foreign associates for expenses and services in filing Brazilian application covering details of Wetzel and Hapgood scales	50.00	
	31. To copies of British patents	.74	

Services.

3. To services in re Fitch-De Vilbiss Interference, preparation of preliminary statement and correspondence concerning De Vilbiss dates of invention	25.00	
3. To services, letter of advice in re Argentine patents	5.00	
5. To services to date in suit against Anderson Co., including preparation for and attendance on defendant's proofs	100.00	
6. To services in re Fitch-De Vilbiss Interference, including preparation of assignment and power	10.00	

	9. To services in re Dunn-De Vilbiss Interfer-		
175	ference, preparation of preliminary state-		
	ment for De Vilbiss, including conference		
	between Rector, Davis and Macauley con-		
	cerning same	25.00	
	12. To services in re Ganzhonr application No.		
	187,716, consideration of references cited		
	and preparation of amendment	10.00	
	12. To same in re De Vilbiss application No.		
	316,949	5.00	
	14. To further services to date in Fitch-De Vil-		
	biss application, including preparation of		
	disclaimer of Fitch and correspondence		
	relating thereto	15.00	
	17-19. To further services to date in suit against		
	Anderson Co., including preparation for		
	and attendance on depositions on behalf of		
	Anderson Co. at Chicago	125.00	Lit.
	21. To services in re application for copyright		
	on Drug Chart, preparation of argument		
	in support thereof	5.00	
	20. To services in re De Vilbiss-tare weight ap-		
	plication No. 180,595, consideration of		
	references cited and preparation of amend-		
	ment	10.00	
	23. To further services in same Anderson suit,		
	including trip to Buffalo and attendance		
	on defendant's depositions there	50.00	
	25. To services in re Brazilian application for		
	patent on Detail Cylinder Scale (Wetzel		
	and Hapgood inventions), including prep-		
	aration and securing execution of formal		
	papers, preparation of draft application		
	for translation, etc.	30.000	
	26. To services, preparation of Canadian and		
	British applications on Church cylinder		
	scale	75.00	
	28. To services, preparation of patent application		
	on Hapgood's double pendulum scale	75.00	
	27. To services in re Pool application on lens		
	system, consideration of references cited		
	and preparation of amendment	10.00	
	30. To same in re Wear application No. 209,395.	10.00	
	30. To same in re Wetzel application No. 321,-		
	369	5.00	
	30. To same in re Duquette application No.		
	317,490	10.00	
	30. To same in re Sholty application No. 330,-		
	465	10.00	

31. To same in re De Vilbiss application No. 332,932 ..... 15.00

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31. To services to date in re defense of suit of Computing Scale Company on Smith patent, instructing Washington associate as to further search for prior patents bearing on Smith re-issue (paper cylinder) and correspondence with Standard Co.'s attorney, also with you and others regrading prior use investigations ..... 50.00 Lit.

31. To services, preparing answer to second suit of Computing Scale Co. and Hayward on Bane and Crane patent on Illuminating Apparatus ..... 25.00 Lit.

$890.32

Litigation ..... 35.75, 31.25, 100.00, 125.00, 50.00, 25.00 = 367.00

Vulcar Ex. 1.10

Patent Ex. 522.22

890.32

J./E. G./J. 11/18/11.
H. A. K.

Of the following bill of $778.08, $728.08 is charged to the Patent Account.

Chicago, Dec. 1, 1911.

Toledo Computing Scale Company, Toledo, Ohio, to Rector, Hibben, Davis & Macauley, Dr.

Disbursements.

1911.

Nov. 1. To telegram (Oct. 26) to Mr. Theobald..... .30

1. To cash paid to Clerk of Court of Appeals in Moneyweight case for costs, later recoverable in Circuit Court..... 12.82

2. To drayage from Depot on scale..... .50

3. To drawings for Hapgood application on Floating Pendulum 36.00

4. To cost of certified copies of file wrapper and contents of Smith patents for use in Scale suits 19.15
8. To express to Toledo—Hapgood application. .30
11. To drawings for Wetzel application on Floating Pendulum 15.00
13. To final government fee, Ganzhorn & Mueller application 20.00
15. To express to Toledo—Wetzel application.. .30

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15. To cost of certified copy of file wrapper and contents of Dunn application for use in Interference with De Vilbiss..... 32.20
17. To express from Indianapolis on Anderson scale 1.35
25. To copies for British patents 1.11
30. To drawing for design application..... 5.00
30. To copies of patents 1.80
30. To copy of Dunn's preliminary statement.. 1.00
30. To copies of patents cited against patents 1,009,093-4 ..... 1.25

Services.

1. To services, letter of advice concerning advertising in Argentine Republic and competition there 10.00
7. To services in re Wetzel application No. 380,126, consideration of references cited and preparation of amendment..... 10.00
9. To services, preparation of Wetzel application for patent on Floating Pendulum... 75.00
10. To services, reviewing Toledo Co.'s foreign patents and preparation of list..... 10.00
10. To services in re copyright registration of Toledo Drug Chart, preparation of brief on right to copyright, resulting in allowance of application..... 15.00
11-15-18-20-24. To services in re Chicago suit of Computing Scale Co. vs. Toledo Co. on Smith patents, preparing for opposition to complainants' motion for an order limiting testimony times, arranging stipulation as to same, searching prior patents, correspondence with various parties as to prior uses, examination of old cylinder scales sent here from your factory, writing Mr. Burkholder as to same, conference with him, correspondence with Mr. Theobald, also interviewing attorneys at Washington as to Wise 75.00

14-16.	To services in re Toledo Co. v. Moneyweight Co., attendance on expert testimony of defendant and cross examining.	150.00
21.	To services in re Dunn-De Vilbiss Interference, preparation of papers on motion to shift burden of proof.....	10.00
22.	To services in re Bancroft Vulcanizer application, consideration of references cited and preparation of amendment.....	15.00 Vul.
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29.	To same in re Burkholder Normally Raised Pendulum application	15.00
24.	To services, consultation with Mr. Burkholder, consideration of newly issued patents	20.00
No. 27.	To services, consideration of question of patents in Holland and letter to foreign associates repeating same	10.00
27.	To services to date in Dunn-De Vilbiss Interference, examination and study of papers in case, including Dunn's file wrapper and contents, and preparation of brief in support of motion to shift burden of proof	150.00
28.	To services, preparation of Wetzel application on Even Balance Scale with pendulum feature	50.00
30.	To services to date in re Bancroft foreign applications on Vulcanizer, including letter of instruction to foreign associates in British, German and Danish cases.....	15.00 Vul.
		$778.08

Credit.

Nov. 1.	By cash, docket fee paid by Clerk of Court of Appeals in Monyweight case	20.00

Chg. Vulcar. 30.00.
" Patents 728.08.
Dec. 19, 1911.

"I have not been able to locate all of the requests as to legal expense. The account is for charges and cost of collection except the Brown & Geddes bill for some general legal expense. I have looked up the matter and ascertained that we had a separate Canadian ledger in the year 1911 on which we kept the Canadian expense, so that there is no Canadian expense in the United States ledger except in items like the 100% Club Convention or something like that, where we could not separate. I desire to take back the statement that the cost of Canadian collections was in my Collection and

Exchange account. I wish to take back the statement that the cash and quantity discounts on Canadian business are not in this figure which I have submitted in my account. Some of the traveling expenses of officers to Canada, however, are charged in the United States Traveling Account. Certain prizes which were offered
for all salesmen, including Canadian salesmen, are entered
179 in the United States ledger, and the publication charges
of the Toledo system which was circulated through Canada, as well as the United States, are charged in the United States ledger, as is Hotel Expenses for Canadian salesmen visiting Toledo. They are not in the Canadian ledger, nor is the cost of maintaining and all the clerical work of the Canadian business. The collections are sent out from Toledo, but the items coming in are less the exchange, and if it is a Canadian exchange it is charged to our Canadian ledger."

"We carry a Canadian section in the Sales Journal, from which we can tell what items entered in the Sales Journal are Canadian, and this Journal entry directs us to the vouchers, but it would be necessary to look up the vouchers to determine the details of the items. The expenses and salaries of Mr. Theobald and other executives were paid at Toledo, and charged to United States business, although these executives supervised the Canadian business as well as the United States and foreign business. There were Canadian managers of sales in Canada, and a Canadian factory manager, which are charged only in the Canadian ledger. All the billing of the Canadian business is made in Toledo, and the expense of this billing has been included in the expenses at Toledo for the year 1911. I believe it would be absolutely impossible to segregate the work done by the clerks on the Canadian billing from the work done by the same clerks on the other billing. I don't know whether the Freight Account includes any freight on goods sold in Canada. We get our data for Canadian entries from vouchers, and the Windsor factory has a petty cash fund, and all bills are paid through here and charged up against the Windsor factory. On our Canadian ledger for 1911 I find there is no account, 'Collecton and Exchange,' no account 'Cash and Quantity Discounts,' no account for 'Recording Orders.' The Sales Journal is divided into sections, numbered 1 to 6, consecutively, No. 3 being given over to the Canadian Journal. When I see on the United States ledger the entry May 13th and 3-C on the debit side of the Quantity Discount account I know that it is a Canadian quantity discount account, and so for other entries in this account. Monthly I enter upon the Quantity
Discount account in the Toledo ledger the quantity discounts
180 of the Canadian business, and the same thing applies to Cash
Discounts, Collection and Exchange account, and Recording Orders account. For the year 1911 I put those items in the account filed, because there is no way to segregate them. On again examining the United States ledger account of Quantity Discounts, I find on May 13 an item of $191.67 that relates to Canadian business. Another Canadian item of $10.62 on June 30th, another Canadian

item of $18.75 on August 29th, and there are probably Canadian entries under the accounts 'Cash discounts,' 'Collection and Exchange' and under the Recording Orders orders Account for 1911. We didn't start to segregate the Canadian Cash and Quantity Discounts, Collection and Exchange, and Recording Orders until January 1st, 1912. We have a separate Canadian advertising account for the year 1911, but that does not contain any advertising sent out from Toledo, and all advertising is instructed from here. In the account filed in the action there are included no Canadian items of District Managers' Salaries and Expense, nor do I think so for Branch Offices. In Miscellaneous Selling there is a Canadian item, March 22nd, $4.50, and in Legal Expense there are Canadian items, but I think not as to Litigation, and I would not know without investigation. The Office Payroll and Office Supplies contain Canadian items, as does the Postage account."

"The Canadian Ledger does not carry any Accounts for Losses on Agents' Accounts or Losses on Customers' Accounts. The United States Account of Postage and Recording Orders contain items for Canadian business. I do not see any items of specific losses on Agents' Accounts from Canada in the United States Account of Losses on Agents' Accounts, but if there had been any such losses on Canadian salesmen, it would be in that Account. This Account is a reserve Account and we established the Reserve Account out of undivided profits—a certain amount set aside to cover losses on Agents' Accounts. In the item $3,620.38 for Losses on Customers' Accounts I find in looking it over that there is an error, the amount showed being $1,618.20—that amount represents the loss for the 10 months in both Canada and the United States on Customers' Accounts so applied to cylinder business and the percentage
181 is .59 per cent. of the total sales of cylinder scales listed in the Account as $274,270.90.

"The percentage figured for the Losses on Agents' Accounts to the total sales on the cylinder scales herein is 4.14. This gives the figure $11,354.80 used in the Account. That figure is obtained by averaging for the whole year and applying this percentage to the sales for the 10 months. We cannot distinguish between losses on fan scales and on cylinder scales."

"We had a separate Account on the ledger for Vulcanizer Expenses on page 147. We have apportioned no Factory Overhead to this Vulcanizer Account and have made no apportionment out of Commercial and Selling Expenses for the Vulcanizer Account, nor have we for Interest on Capital. All the factory overhead and commercial and selling expense of vulcanizer is charged against scales as well as interest on capital, and no part of the administration or general expense was pro rated to the vulcanizer business. It was a vulcanizer for mending tires, a machine that was manufactured here, advertised and sold."

"The 1912 period of this Account terminates on September 3, 1912, and we included in this Account every cylinder scale sold between January 1, 1912, and September 3rd, whether such cylinder scale contained a cylinder of steel or aluminum construction. Our

Factory Overhead on page 28 of the Account covers the period up to September 1, 1912. The item, Miscellaneous Expense is the same thing as Miscellaneous Factory Expense in the 1911 Account. We have a new item in the 1912 Account, Chart Stone Expense, because this was the first year in which we kept this Expense separate. Before this it was not identified on the books. It covers charts for cylinder as well as all other types of scales."

"Another new item is Service Expense, covering expenses of our Service Department, rendering service to customers in adjusting their scales, furnishing them with new supplies, etc. It is impossible to separate the items in the Factory Overhead Expense between the cylinder and other kinds of scales and accordingly we have pro rated it."

"The same answers made with reference to the 1911 period would apply to this 1912 period as respects the items—Experi-
182 mental Account, Tools and Patterns, Packing and Shipping, Trucking, Maintenance, Superintendent and Factory Offices, Miscellaneous Manufacturing Expense, and Refinishing Expense. The sales in the eight months of 1912 were much greater than the sales in the ten months of 1911. The item of Lumber is not separated in 1912 and is probably included in Maintenance, Repairs and Alterations. Our Factory Overhead for the year 1912 bears the percentage of 72.7% of the labor and material for this year. The reason for this decrease of the percentage from that of the 1911 period is that we have made less charges against Overhead Account."

"Our total amount for labor and material for the 1912 period is $39,154.28 for the cylinder scales listed in the Account. Our total bill for labor and material on all scales is shown in the ledger to be $133,288.88, and our total for Factory Overhead Expenses is shown on page 28 of the report to be $96,861.36. By dividing the former figure into the latter we obtain our percentage of 72.7%. We did not make an inventory adjustment for September 1, 1912, but used the nearest inventory of June 30, 1912. The charge for Factory Overhead of $28,465.16 in the account is, in my judgment, a fair and reasonable charge of factory overhead apportionable to our cylinder scales sold during the eight months period of 1912. The Commercial and Selling Expense on page 29 of my account is consigned to the eight months period."

"The Experimental Account is kept on page 15 of the 1912 ledger. I have no way of telling whether the Experimental work entered thereon refers to experiments on cylinder scales or on other scales. All I know is that they had an Experimental or Invention Department and whatever expenses were incurred by this department or salaries for the employees of this department would be charged on the Experimental Account."

"The Experimental Account for 1912 was then read into the record as follows:

183 Experimental.

1912.			
Jan. 2.	Saly. Mr. Templeton Bin	CD	$250.
15.	Saly. Mr. Templeton Bin	"	250.
17.	Draft G. H. Morrison	"	60.
22.	Expenses G. H. Morrison	"	12.80
22.	Draft L. B. Thomas	"	75.
24.	Natl. Comp. Bin (Pur.)	"	20.
29.	Frt. Express	"	1.
19.	Bell Bissell & Co	PJ	6.43
19.	Wm. Eberth & Co	"	4.29
20.	Hungerford Brass Co	"	1.63
20.	Hamilton Foundry	"	21.01
22.	Toledo Metal Spinning Co	"	2.75
22.	Walding Kinnan and Marvin	"	1.04
29.	Dayton Art Glass	"	1.50
30.	Hamilton Foundry	"	5.06
31.	Castings	"	5.33
31.	Chas. G. Stevens Co	"	1.08
31.	Labor (Salaries)	J	841.21
Feb. 1.	Saly. W. G. Templeton (Bin)	CD	250.
15.	Saly. W. G. Templeton	"	250.
29.	Salaries	J	903.17
29.	Purchases	PJ	16.61
29.		"	24.32
Mar. 5.	Saly. W. G. Templeton	CD	250.
13.	Sundry bills	"	2.90
14.	Drug scale purchased	"	35.
22.	Express	"	.60
26.	Exp. Chas. Forth Boston	"	65.
28.	Exp. E. C. Poole	"	26.10
30.	Labor	J	1,183.81
30.	Purchases	PJ	25.46
30.	Purchases	"	30.34
Apr. 2.	Express	CD	.60
24.	Express	"	.50
30.	Salaries	J	1,059.08
30.	Purchases	PJ	298.81
May 7.	Express	CD	1.70
31.	Salaries	J	1,369.17
31.	Purchases	PJ	272.59
June 29.	Saly. Crain	J	35.
July 13.	Saly. Crain	J	35.
June 28.	Saly. Craine	CD	35.
30.	Misc. Purchases	PJ	.79
30.	Misc. Purchases	"	151.99
30.	Salaries	J	1,165.27
July 5.	Saly. Crain	CD	35.
31.	Salaries	J	1,127.19

	31. Misc. Purchases	PJ	93.55
Aug.	26. Exp. on Scale from Colo. Spgs	CD	1.80
	27. E. C. Poole July & Aug. Saly	"	100.00
	31. Purchases	PJ	94.74
	31. Labor	J	1,353.40
Sept.	24. Cash Voucher	CD	1.00
	30. Purchases	PJ	22.50
	30. Salaries	J	970.44
Oct.	2. Exp. etc.	CD	1.80
	31. Salaries	J	847.43

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1912.			
Oct.	31. Purchases	PJ	18.83
Nov.	30. Bond Fessandon	J	6.
	30. Purchases	PJ	27.70
	30. Payrolls	J	1,061.34
Dec.	23. Copy "Inventors Educator"	CD	1.00
	31. Misc. Purchases	PJ	85.58
	31. Payrolls	J	863.13
			$15,691.37
Dec.	31. Loss & Gain	J	15,691.37
			$15,691.37

"I have no way of telling from the Tools and Patterns Account on Page 20 of the ledger whether any of those Tools and Patterns were made for cylinder scales. Similarly from the Account, Chart Stone Expense, on page 72 of the ledger there is no way of separating the expense for cylinder scales from other kinds of scales, nor can I identify in the Service Expense Account on page 50 of the ledger, Services rendered for cylinder scales as differentiated from other kinds of scales. The Account, Refinishing Department Expense, covers expenses of refinishing every kind of a scale and includes work on second hand scales. It would be impossible to segregate that which refers to cylinder scales and that which refers to other kinds of scales. The Account, Refinished Department, was here read into the record as follows:

Refinished Department.

1912.			
Feb.	1. Saly. F. A. Norton	CD	18.
	1. Saly. J. R. Whitbeck	"	25.
	8. Saly. F. A. N.	"	18.
	8. Saly. J. R. W.	"	25.
	13. Exp. S. F. Office 2/3	"	29.75
	15. Saly. F. A. N.	"	18.
	Saly. J. R. W.	"	25.
	21. Saly. F. A. N.	"	18.
	Saly. J. R. W.	"	25.

	26.	S. F. Expenses bills	"	15.
	29.	Saly. F. A. N.	"	18.
		Saly. J. R. W.	"	25.
	29.	S. F. Expenses	"	34.59
	17.	Saly. F. A. N. January	J	72.
	29.	Payroll	"	1,139.80
	29.	Payroll	J	227.22
	29.	Misc.	PJ	6.50
	29.	Misc.	"	5.
Mar.	1.	Saly. W. H. Fellows	CD	17.55
	7.	Saly. J. R. W.	"	25.
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		Saly. J. A. N.	"	18.
	12.	Frisco Expenses	"	15.55
	14.	Saly. J. R. W.	"	25.
		Saly. F. A. N.	"	18.
	21.	Saly. J. R. W.	"	25.
		Saly. F. A. N.	"	18.
	26.	Frisco Expenses	"	16.42
	28.	Saly. J. R. W.	"	25.
		Saly. F. A. N.	"	18.
	8.	Direct Labor Jan. & Feb.	J	462.25
	30.	Labor	J	1,554.76
		Labor	J	269.55
	30.	Material Purchases	PJ	122.66
Apr.	26.	Saly. W. H. F. 1 wk.	CD	17.55
	28.	Frisco Exp. to 4/1	"	37.50
	30.	Ref. Scales at Frisco	J	330.
	30.	Factory Payroll	"	1,077.68
	30.	Factory Payroll	"	235.36
Feb.	29.	Repair work for Service Dept.	"	59.07
Mar.	11.	J. A. Nadeau Saly. to correct	"	12.
	15.	J. A. Nadeau Saly. to correct	"	12.
	21.	Labor for Service Dpt.	"	349.87
	30.	Labor for Service Dpt.	"	67.47
	11.	Labor for Service Dpt.	"	129.41
Apr.	23.	Saly. T. P. McMann	"	12.
	30.	Labor for factory	"	84.71
May	31.	Labor for factory	"	131.77
	31.	Labor for Service Dept.	"	143.89
June	30.	Labor for Service Dept.	"	153.53
	30.	Frt. Claims Labor	"	77.42
	30.	Chg. to Agents	"	1.50
	30.	Invty. Adj.	"	50.54
	30.	Invty. Adj.	"	78.42
July	31.	Frt. Claims	"	37.96
	31.	Labor for Service Dept.	"	141.61
Aug.	31.	F. A. Braun time at Cols.	"	11.37
Sept.	25.	Frt. Claims	"	10.33
	25.	Labor for Service Dept.	"	91.01
	25.	Labor for Service Dept.	"	89.73

	25.	Frt. Claims	"	14.97
	30.	Labor for factory Sept.	"	81.66
	30.	Labor for factory Aug.	"	176.89
Apr.	30.	Material	PJ	213.41
May	31.	Payroll	J	1,237.80
	31.	Payroll (factory)	"	143.25
	31.	Supplies	PJ	11.24
June	20.	Ref. Scales at Frisco May	J	154.
	30.	Factory Labor	"	97.
	30.	Factory Labor	"	1,032.49
	30.	Reb. & Ref. Scales Frisco June	"	192.50
	30.	Material	PJ	45.
	30.	Material Invety. Adj.	J	7.12
July	31.	Labor	"	145.63
	31.	Payrolls	"	870.48
	31.	Reb. & Ref. Scales Frisco	"	168.47
Aug.	31.	Labor	"	1,205.62
Sept.	26.	Saly. R. L. Heiney	CD	8.
	30.	Factory labor Sept.	J	242.68
	30.	Factory labor Aug.	J	196.25

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1912.

Sept.	30.	Labor	J	898.05
	30.	Scales ref. at Frisco Aug. & Sept	"	245.
	30.	Supplies	PJ	10.50
Oct.	2.	Saly. Carrothers	CD	20.
	2.	Misc. Rep. T. J. Horne	"	3.75
	3.	Saly. R. L. Heiney	"	8.
	31.	Frisco Scales Ref. Oct	J	91.
	31.	Labor factory	"	332.36
	31.	Payroll	"	981.53
Nov.	25.	Exp. Stat. Rochester, N. Y	"	2.
	30.	Payroll	"	1,193.64
	30.	Frisco Scales Reb. & Ref	"	80.50
	30.	Labor	"	226.03
Dec.	11.	Cash Voucher, Ft., etc	CD	1.15
	31.	Labor	J	139.34
Oct.	12.	Saly. R. L. Heiney Retd	"	8.
	31.	Labor Service Dept. Oct.	"	100.58
	31.	Ft. Claims	"	40.88
	31.	Labor for other Depts	"	88.70
Nov.	30.	Frt. Claims	"	17.23
	30.	Junk sold at Frisco	"	5.
	30.	Labor for other depts	"	98.17
Dec.	31.	Labor for other depts	"	138.66
	31.	Labor for other depts	"	131.23
	31.	Ft. Claims	"	27.43
	31.	Loss & Gain	"	14,967.79
Dec.	31.	Labor	J	966.28
	31.	Sal. H. A. Brunn 8/10	"	15.

31. Frisco Scales Reb. & Ref.	"	175.
31. Supplies Inv. adj.	"	115.37
31. Material Inv. adj.	"	93.67
		17,641.80
		17,641.80

"This Refinished Department Account in 1912 is the same Account as the Rebuilt Department Account in 1911 and the totals for these Departments in each year I have entered in the Account as Refinishing Expense. The entries in the Account referred respectively to the 1911 period and 1912 period, and not to the entire year.

"In apportioning the Commercial and Selling Expenses for the 1912 period to the cylinder scales sold during the period, I have taken the total sales for the period and the total Commercial and Selling Expenses for the same period and obtained 37.1% as the percentage applying in 1912. This is the same method as was used in the 1911 period. Accordingly I have apportioned to cylinder scales out of the total figure of $293,521.65 for Commercial
187 and Selling Expenses the sum of $118,832.77. That covers all the overhead of commercial and selling that is fairly apportionable to all selling scales sold in the 8 months of 1912.

"In 1912 we separated the Canadian business from the United States business, having separate accounts for such items as Cash and Quantity Discounts, Collection and Exchange, Freight on Scales, and Legal Expenses. We had no separate Litigation Account or Patent Expense Accounts, and the work of invoicing and billing for scales sold in Canada was done in Toledo. We did not apportion to the Canadian business any portion of the Commercial and Selling Expenses because we regarded the clerical work involved in invoicing and billing to be such a small amount—so insignificant—that it would not amount to anything. We did not charge any part of the Factory Overhead Account to the Canadian Business nor of the Office Pay Roll, Office Supplies or Recording Orders Accounts.

"The book Accounts of the Canadian business were kept here in the office and the collections were made from here, but the direct cost of collections was charged to the Canadian business, that is the Collection and Exchange for the year 1912, although the clerical work involved in recording the collections was done here. We have separate Canadian Advertising Account in 1912, but if any advertising was mailed from here to Canada the postage would be charged in the United States account. There is nowhere upon our books an apportionment of the charge for advertising Scales from here to Canada were billed at their selling price, and any parts that may have gone over were billed covering cost of labor and material. I don't know whether there was anything added for parts of scales shipped from here to Canada, as I have never made up the cost figures.

"Referring to the item, 'Commissions,' on page 31 of the Account Furnished by Defendant, the commissions were taken directly off the Customers' Accounts and represent the commissions that follow the sales of the cylinder scales listed in this account. If a scale that had

been sold was taken back for some reason, the commission paid to the salesman on such sale was charged against the salesman.

"The items on page 31, 'Losses on Customers' Accounts,' and 'Losses on Agents' Accounts,' were arrived at in precisely the same way as the same accounts in the 1911 period, as were the items,
188 'Depreciation on Buildings,' and 'Interest on Capital Invested.' These accounts were apportioned to the sales of cylinder scales during the period.

"The account, 'Legal Expense,' for the year 1912 is entered on page 115 of the ledger, and represents expenses in collection for scales. We have no way of dividing that account as between cylinder and other scales.

"The account, 'Litigation,' is entered on page 117 of the 1912 ledger, containing items in payment of bills to Rector, Hibben & Davis, the settlement of Dolman case, United States Circuit Court fee, expense D. H. Kelly in Cincinnati case, and others."

The vouchers covering these items were requested by counsel for complainant to be produced later, and the ledger account was read into the record as follows:

Litigation.

1912.

Jan. 29.	Express on Cash Register	CD	1.00
Feb. 15.	Bill Rector H. D. & Mc	J	300.
Mar. 21.	Settlement Dallman Case	CD	1,350.
26.	U. S. Circuit Court Fee	J	50.
26.	Myers, Cushman & Rea	"	84.
26.	Fred H. Warren	"	100.
Apr. 18.	Elder, Whitman & B. Bill 4/1	"	36.41
11.	Bill A. H. Meads	"	665.10
June 19.	Bill A. H. Meads	"	507.94
July 11.	Exp. D. H. Kelly to Chi. (Cinti. Case)	"	8.80
12.	Ticket Chgo. Kelly	"	7.50
18.	Exp. F. H. Knowles	"	32.75
20.	Exp. E. R. Randolph	"	33.
22.	Exp. H. O'Connor	"	4.10
22.	Exp. S. M. H. to N. Y	"	21.80
23.	Bill T. J. McMillan	"	201.95
23.	Exp. J. Doriot	"	40.
23.	Bill Baxter & Van Dusen	"	100.
23.	Bill Eastman Bros	"	220.50
24.	Ptg. Record of Appeal	"	525.
20.	Welles Bowen to Balto	"	45.80
31.	Exp. E. F. S. Ent. a/c Cinti. Case	"	2.10
31.	Exp. H. O'Connor	"	10.
31.	Bill Secor Hotel	PJ	11.65
Aug. 2.	Ent. a/c Cinti. Case	CD	3.10
9.	Ent. a/c Cinti. Case	"	.65
31.	Appeal bond W. B. Co	J	125.

Sept.	30. Bill R. H. & Davis 9/2	"	319.15
	30. Bill Secor Hotel	PJ	48.50
Oct.	3. Bill Eastman Bros	CD	36.90
			4,892.70
Mar.	28. Bill I. F. Baxter	J	53.15
Sept.	30. Secor refund	PJ	1.00
Dec.	31. Loss & Gain	J	4,838.55
			4,892.70

189 "The Patent Expense Account begins on page 122 of the 1912 ledger, and contains items of bills paid to Mr. Rector's firm and Mr. Meads, Kate S. Homes, S. T. Klotz, and others."

The vouchers for this account were requested by counsel for complainant to be produced later, and the ledger account for 1912 was read into the record as follows:

Patent Expenses—1912.

1912.

Jan.	2. Saly. F. P. Dunn	CD	$100.00
	3. Expenses Jno. W. Culmer	"	17.06
	3. Expenses Jno. H. Milburn	"	12.70
	4. Saly. J. D. B.	"	100.
	5. Saly. J. D. B.	"	57.70
	11. Saly. J. D. B.	"	100.
	12. Saly. J. D. B.	"	57.70
	18. Saly. J. D. B.	"	100.
	19. Saly. J. D. B.	"	57.70
	20. Traveling exp. J. D. B.	"	185.97
	24. Exp. C. G. Milburn	"	79.15
	25. Saly. J. D. B.	"	100.
	26. Payroll J. D. B.	"	57.70
	27. E. C. Poole contract	"	200.
	27. Exp. Wm. Fitch	"	100.50
	29. F. P. Dunn exp.	"	25.
	31. Trav. exp. J. D. B.	"	115.92
	25. C. H. Hapgood exp. 1/20	J	62.80
	31. Scale exchanged with E. F. Searles	"	70.00
Feb.	1. Saly. F. P. Dunn	CD	100.
	1. Saly. J. D. B.	"	100.
	2. Saly. P. D. B.	"	57.70
	6. Tax on French Patent 305,598	"	20.
	8. Saly. J. D. B.	"	100.
	9. Saly. J. D. B.	"	57.70
	13. Bill Myers, C. & Rhea	"	10.
	15. Saly. J. D. B.	"	100.
	15. Bill of A. C. Brown	"	30.
	16. Saly. J. D. B.	"	57.70

	16.	Bill S. T. Klote	"	73.40
	16.	Exp. J. H. Milburn	"	31.75
	17.	Exp. J. D. B.	"	21.95
	20.	Express	"	.40
	20.	Payment S. G. Grane on a/c	"	250.00
Feb.	14.	Balance of French Tax 305,598	J	20.00
Feb.	20.	Pur. of scale by Chicago office	CD	15.00
	23.	Payroll J. D. B.	"	57.70
	15.	Bill A. H. Meads 2/1/12	J	561.70
	15.	Bill R. H. D. & Mc 1/2/12	"	939.16
	15.	Bill K. S. Holmes 2/3	"	133.70
	15.	Bill Fish R. H. & N.	"	25.
	17.	Exp. S. G. Crane 1/17	"	49.25
	17.	Bill U. S. Patent office	"	4.45
	17.	Bill U. S. Patent office	"	2.20
	28.	Bill Rector H. D. & Mc 2/1	J	1,486.34

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	29.	Misc. bills	P	21.51
Mar.	1.	Saly. J. D. B.	CD	57.70
	1.	Saly. F. P. Dunn	"	100.00
	4.	Tax Patent 66640	"	20.
	8.	Saly. J. D. B.	"	57.70
	12.	Argentine Tax 8314	"	15.
	12.	British No. 8324	"	65.
	12.	German No. 140,446	"	145.
	15.	Saly. J. D. B.	"	57.70
	20.	Standard scale purchased	"	65.
	21.	Services of E. H. Cross	"	15.

Patent Expense.

Mar.	22.	Saly. J. D. B.	CD	57.70
	28.	Exp. J. D. B. Detroit	"	23.90
	28.	Exp. N. Hansen	"	40.
	29.	Saly. J. D. B.	"	57.70
	19.	Bill R. H. D. & Mc 3/1	J	943.11
	20.	Bill U. S. Patent office	"	3.30
	21.	Bill McMeen and Miller	"	862.65
	30.		PJ	2.42
Apr.	1.	Saly. F. P. Dunn	CD	100.
	2.	Express	"	.28
	3.	Exp. a/c D. Underhill	"	50.85
	5.	Saly. J. D. B.	"	57.70
	5.	Bill S. T. Klotz	"	53.40
	9.	Exp. F. P. Dunn	"	15.20
	12.	Saly. J. D. B.	"	57.70
	12.	Exp. E. R. Barrett	"	10.
	12.	Exp. E. R. Randolph	"	10.75
	13.	Exp. Louiso and Dunn	"	26.40
	13.	Bill S. T. Klotz	"	129.75

	17.	Express	"	.65
	19.	Saly. J. D. B.	"	57.70
	24.	Tax British Patent	"	65.
	26.	Saly. J. D. B.	"	57.70
	18.	Bill U. S. Patent office	J	1.35
	30.	Bill Rector H. & D. 4/1/12	"	1,290.99
	30.	Misc. Purchases	PJ	19.40
May	1.	Saly. F. P. Dunn	CD	100.
	3.	J. D. B.	"	57.70
	4.	Bill Meyers Cushman & R.	"	32.50
	7.	Express	"	.50
	9.	Tax British Patent No. 8852	"	70.
	10.	J. D. B.	"	57.70
	10.	Payment G. B. Louiso	"	250.
	10.	Payment F. P. Dunn	"	250.
	10.	Exp. Dunn & Louiso	"	30.
	17.	J. D. B.	"	57.70
	21.	Bill of E. A. Belden	"	8.
	21.	Bill of Marks and Clerk	"	271.11
	23.	Bill T. C. Becker	"	50.
	24.	J. D. B.	"	57.70
	29.	Payment to W. G. Templteton	"	500.
	31.	J. D. B.	"	57.70
	31.	Bill Rector J. D. & Mac	J	711.08
	31.	Bill U. S. Patent Office	"	2.60
	31.	Exp. H. S. Bergen 5/25	"	27.20

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June	1.	Saly. F. P. Dunn	CD	100.
	5.	Exp.	"	.15
	7.	Saly. J. D. B.	"	57.70
	10.	Expense W. G. Templteton	"	18.60
	13.	Saly. J. D. B.	"	57.70
	17.	Chicago Expense	"	3.
	21.	Saly. J. D. B.	"	57.70
	21.	Dayton Elect. Scale	"	104.50
	24.	Bill Walker and Walker	"	9.

Patent Expense.

1912.

June	24.	Bill Eastman Bros.	CD	388.30
	24.	Sub. to Monthly Review	"	3.
	26.	Payment to E. C. Pool	"	100.
	27.	Expenses E. C. Pool	"	33.10
	28.	Saly. J. D. B.	"	57.70
	20.	Bill R. H. D. & Mac. 6/1	"	431.71
	20.	Exp. Stat. L. C. Wetzel 6/1	"	15.40
	20.	Bill Patent Office 6/1	"	1.15
July	1.	Saly. F. P. Dunn	"	150.
	1.	Exp. E. E. Dilbilau	"	10.
	2.	F. G. Templteton Monthly Payment	"	100.

	8.	Exp. at Chicago, Drayage, etc.	"	5.60
	9.	Subs. Board of T. Journal	"	3.17
	17.	Bill F. P. Dunn 9 Scales	"	135.
	22.	Exp. on Scales to R. H. D. & M.	"	2.87
	22.	Exp. L. C. Wetzel	"	2.75
	31.	U. S. Patent office bill	J	4.80
	31.	Frts	"	2.34
	31.	Photos	PJ	3.40
	31.	Bill Secor Hotel	"	12.35
Aug.	1.	Saly. F. P. Dunn	CD	150.
	2.	Ft. & Exp.	"	.25
	2.	F. G. Templteton Monthly Payment	"	100.
	5.	Eastman Bros. Transcript	"	113.35
	15.	1 Avery 3-lb. scale	"	15.20
	26.	Ft. on 3-lb. scale Milwaukee	"	1.00
	31.	U. S. Patent office bill	J	14.90
	31.	R. H. D. & Mac. bill 7/1	"	1,887.44
	31.	R. H. D. & Mac. bill 8/1	"	863.25
Sept.	3.	Saly. F. P. Dunn	CD	150.
	3.	F. G. Templeton Monthly Payment	"	100.
	6.	Bill Meyers, C. & Rea.	"	10.
	6.	Bill Underwriters' Laboratories	"	5.
	7.	Taxes on British Patent French 382,597 German 210,808	"	32.50
	9.	Taxes on Danish 15191	"	107.50
	19.	Bill S. Krumius	"	39.25
1912.				
Aug.	15.		J	.40
Oct.	22.	Refund a/c Simpson scale not purchased.	"	65.
Nov.	30.	Rev. entry 11/18	"	.20
Sept.	26.	Payment to E. C. Poole	CD	200.00
	24.	Bill U. S. Patent Office 8/31	J	2.
	25.	Rev. Entry acc't R. H. and Davis	"	40.
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	30.	Bill R. H. D. & M. 9/2	"	509.83
Oct.	1.	Sally. F. P. Dunn	CD	150.
	1.	W. G. Templeton Monthly Payt.	"	100.
	1.	W. F. Harris Royalty	"	100.
	1.	E. C. Pool Saly	"	50.
	5.	Bill Meyers, Cushman, Rea	"	10.
	7.	Tkts. S. G. Crane K. C.	"	17.70
	18.	Can. Pat. 80,151 Copies	"	3.
	29.	Ft. Exp. etc.	"	2.90
	31.	Bill U. S. Pat. Office 9/30	J	3.30
	31.	Bill R. H. D. & Mac. 10/1	"	346.76
Nov.	1.	W. G. Templeton Paym't	CD	100.
	1.	E. C. Pool Saly	"	50.
	1.	E. P. Dunn Saly	"	150.
	12.	Exp. on Scale & papers	"	1.95

Patent Expense.

Nov.	18.	Bal. fund U. S. Patent Office	CD .20
	19.	Paymt. F. P. Dunn	" 250.
	19.	Paymt. G. P. Louiso	" 250.
	22.	Bill Meyers, Cushman & Rea	" 2.50
	27.	Bill Marks & Clark	" 101.91
	29.	Exp. F. P. Dunn 11/23	" 12.20
	25.	Bill R. H. D. & M. for Oct.	J 806.64
	25.	Exp. S. G. Crane 10/12-19-26	" 102.40
	30.	Coupon books Patent office	" 22.
	30.	Bill U. S. Patent Office 10/31	" 2.40
Dec	.2.	Saly. F. P. Dunn	CD 150.
	2.	W. G. Templeton Pay't	" 100.
	2.	E. C. Pool	" 50.
	9.	Bill Robertson & Johnson 11/1	" 143.95
	11.	Ft. & Exp.	" 1.80
	26.	E. C. Pool Contract 6/26/12	" 200.
	27.	Express	" .45
	31.	Bill R. H. D. & M. Nov.	J 521.65
			23,110.86
1912.			
Dec.	31.	Loss & Gain	J 23,025.26
			23,110.86

The offer of the plaintiff was confined to the year up to September 3rd, 1912, and vouchers were requested only to that date.

Witness then produced the monthly statements for December 1911, a copy of which is contained in this abstract on page — and testified the figures were in his handwriting and that he had taken the totals from the trial balance books covering the 1911 ledger; that a similar monthly statement was made for each month as a summary of the books.

"In the first columns of this statement, December, 1911, appear- the total business for 1911, and in the second column appear- the
193 Statement of the business for the month of December, 1911, only. Under the head of 'New Scales Sold' we show all scales sold in the United States that were new scales. The Canadian sales are carried in a separate account, Canadian, and we have a separate account for foreign scales sold, that is, scales manufactured in the United States and sold from Toledo but going to foreign countries. The total sales of new scales in the United States for the year 1911 was $1,288,012.58; of the second hand scales, $18,466.79; and of the foreign scales sold, $29,514.39. This makes a total of all scales sold, exclusive of Canadian sales of $1,412,347.32. I cannot tell from this statement the amount of sales in Canada, for the reason that the statement simply shows the profit on Canadian sales of all kinds of scales. We have separate sheet in this statement, marked 'Canadian' and covering the Canadian business."

Then follows:

Mr. Zane: I now offer in evidence a paper consisting of a number of sheets I have stated, marked "Plaintiff's Exhibit No. 8, for identification, December 15, 1915, C. B. N."

Mr. Meads: To which, if Your Honor please, we object. The record may show we produced this paper for examination for the purpose of asking the witness any questions, but they are not book accounts, they are memoranda made inside the company for the convenience of the officers and are not essential evidence which is material to the issue of this case.

The Master: Well, they are a part of the records of this business, are they not, and are used by this company to assist in keeping track of its affairs?

Mr. Meads: That is true. But that does not necessarily make them competent evidence because they are part of what you find in here at this office.

The Master: I will overrule the objection.

(Said document, heretofore marked for identification, Plaintiff's Exhibit No. 8, so offered, received in evidence, and marked "Admitted.")

The Master: It is agreed that copies shall be made under the supervision of the Master, which copies are to be used as the evidence in the case, and the originals returned to the company.

Mr. Hibben: Will the exception go in automatically?

194 The Master: Yes, that has already been stated in the record that wherever there is a ruling of the Master, that the adverse party is supposed to have an exception.

Witness produces monthly statement of August 1912, and testified that this statement is made up in the same way as that statement for December, 1911, and the totals are correctly taken from the books. It contains in the first column the business for the eight months ending August 31st, 1912, and in the second column the statement for the business of August, 1912, only.

"This statement contains a separate account for Canada, similar to the 1911 statement. The New Scales Sold in the United States for the first eight months of 1912 amount to $840,664.11; the Second-Hand Scales sold amount to $8,518.30; Foreign Sales to $26,718.80; Refinished Scales, Toledo, $36,064.50; Refinished Scales, Competitive, $50,588.00, and Supply Sales, $1,977.79. The Supply Sales refer to sales of paper bags, oil and various items like that."

The monthly statement for August, 1912 was then offered in evidence, and admitted by the Master over objection by counsel for the defendant.

The witness then produced the statement for December 31, 1910, and testified that it was made up in precisely the same way as the statement for December 1910. The new scales sold in 1910 amount to $1,286,263.68. The second hand scales sold amount to $53,879.97; foreign sales to $26,720.21; and rebuilt sales to $38,227.82, giving a total United States sales for the year of $1,405,091.68.

This statement for 1910 was then offered in evidence and admitted by the Master over objection of the counsel for defendant and marked Plaintiff's Exhibit 10.

Witness next produced a statement for December 31, 1909 and testified that all his answers as to the former exhibits 8, 9, and 10 would apply to this statement produced; that he had not personally made up this statement, and that he did not know who did make it up, but that he had found it in the files of the company and it had been made up by somebody connected with the company.

This statement was then offered in evidence and marked Plaintiff's Exhibit 11 over objection.

195 Witness next produced the statement for December 31, 1908, and testified that he had not made up this statement and did not know as to the correctness of it, but that he had found it with the other records of the company. This statement was then offered in evidence and admitted by the Master over objection of counsel for defendant, and marked Plaintiff's Exhibit 12.

The witness next produced the statement for December 31, 1907 and testified that he had not made up this statement but found it with the rest of the papers of the company in the safe which they have. This statement was then offered in evidence and admitted by the Master over the objection of counsel for defendant, and marked Plaintiff's Exhibit 13.

Witness next produced the statement for December 31, 1906, and testified that he had not made up this statement but found it with the rest of the papers of the company. This statement was then offered in evidence and admitted by the Master over the objection of counsel for defendant, and marked Plaintiff's Exhibit 14.

Witness next produced the statement for December 31, 1905, and testified that he had not made up this statement but found it with the rest of the papers of the company. This statement was then offered in evidence to show the magnitude of the business before the infringing business was begun and admitted by the Master over the objection of counsel for defendant, as bearing upon the proportion of increase of expenses, and marked Plaintiff's Exhibit 15.

"Referring now to page 33 of the Account Furnished By Defendant, the sales for 1911 and 1912 of the cylinder scales listed in the Account and the figures are given as net cash, the net return to the company. By adding together the sales for the two periods we get the total. There is shown costs and expenses of 1911 and 1912, the total of which exceeds the total receipts from sales by $10,594.16. Below, we have the statement:

Loss on proportion of sales not represented by alleged infringing device	$10,112.30
Loss on proportion of sales represented by alleged infringing device	$481.86

"These two sums together make the total loss shown. To find the latter amount I took the cost of the No. 381 chart, on page 34
196 of my Account filed, and then the cost of the No. 385 chart on the next page, one 73 cents and the other 68 cents, and

averaged the price at 70 cents, and then multiplied this average figure by the number of scales sold, 4,611, which gives $3,250.75, cost of charts, and I then divided total labor and materials of $74,-119.97 into $3,250.75, and that gives 4.38%, and that percentage of $10,594.16 gives $481.86."

Cross-examination.

By Mr. Meads:

"I have stated that I have made no distinction as to whether the scales sold after March 8th, 1911, contained cylinders of aluminum or steel. I did not, of my own knowledge, know what the cylinders were made of. I started in the month of March, 1911, because I was informed that they began using light charts then, and from that time on I have accounted for every cylinder scale."

"The items that I have used in what I have called 'Inventory Adjustments,' were taken right from the inventories that were submitted by the Factory Department, Stock Department, and so forth. The purpose of the inventory adjustment was to show on the books the amount of increase or decrease in stock and charge it, or credit it, to expense. We made only semi-annual inventories and so I had to take the inventory nearest to the desired date in preparing this account. The perpetual inventory was of parts only, agates, platters, screws, small parts, bolts, stems, axles and hubs, and some of the bolts and screws might go into either a fan or a cylinder scale indiscriminately, and there was no way of determining from those parts just how many either of fan or cylinder scales we would have in the perpetual inventory."

"I was asked by Mr. Zane why the expenses of the San Francisco Branch Office were so much greater than the other branch offices. I find that the expenses of the San Francisco office are really not so great when you consider the territory covered by the San Francisco office. They handled the orders for the entire district west of and including Denver, Utah, Montana, Nevada, Western Texas, Idaho, California, Washington, New Mexico, Oregon and Arizona. This territory entails a large clerical force and the expenses per square mile covered are less than the Eastern offices."

197 "The 100% Club Convention, an account of which we carry upon the books, is attended by the salesmen who secure their sales quota during the year. Each salesman is given a certain quantity of sales for him to reach during the year, which is measured by a certain number of points—$10 in sales equaling one point. To be admitted to the 100% Club a man must have sold 100% of this quota for an entire 12 months. It is an award of distinction for selling a desired amount of sales in his territory. I know that a 100 point Club is used by the National Cash Register Company by whom I was previously employed. It is a club substantially the same as the 100% Club here. During my experience of six years' employment in this company, and before that, with the National Cash Register Company, I have found that this 100% Club is a great incentive to the various salesmen, and has proved beneficial in raising the

volume of sales. Many salesmen will almost reach the 100% Club and thus sell a large amount of our product without securing admission into the club.

"I have stated in response to a question by Mr. Zane that the 1911 Account covers the recording charges for Canadian business as well as American business. I do not know of any such items covering the expenditures in Canada for recording, nor do I know whether conditional sales are required to be recorded over there."

"The item, 'Losses on Customers' Accounts' I have shown involved a loss of .59%. This percentage, however, does not cover such disbursements as we make in attempting to collect the customers' accounts. That account consists of absolute losses of scales, where the scales have absolutely disappeared. For example, when the customer takes the scale and disappears and no trace of him or the scale can be found. It is not a loss of bills or accounts receivable, or anything of that kind. I do not mean to say that .59 would represent a fair loss on all our Customers' Accounts."

"Of the monthly statements offered in evidence by plaintiff, I personally was concerned in preparing only three, those which are marked Plaintiff's Exhibits Nos. 8, 9, 10. I first came to the Toledo Company in June, 1909, and the Plaintiff's Exhibits Nos. 11, 12, 13, 14 and 15, if prepared by anyone concurrent with the dates
198 therein mentioned, were prepared before I was an employe of this company. Accordingly, I know nothing of them, except that I found them among the papers of the company. The plaintiff's Exhibit No. 11 looks like some of the assets and liabilities, and sheet 5 was in my handwriting."

"In preparing the Account Furnished by Defendant, I included all sales of cylinder scales up to and including September 3rd, 1912, but in charging the expenses of the operation of the business I have only computed them to August 31st, 1912, so that there are three days in which we have given credit for sales and have not taken off anything for reasonable expenses of operation or overhead.

"The loss of $10,594.16, noted on page 33 of the Account, is the total loss on the sale of cylinder scales from the period beginning March, 1911, to September, 1912. When I say that the loss on the proportion of sales represented by the alleged infringing device was $181.86, I mean that the loss which accrued to the company by reason of the cylinder spider and chart alone, as represented by the proportion which the cost of the cylinder bore to the cost of the entire scale."

"In answer to one of the questions propounded by counsel for the complainant, I stated that I could not apportion the cost of manufacturing and other items between the cylinder scales and the other scales manufactured by defendant. As a matter of fact, I did prorate the cost for the reason that in no instances do the books distinguish between the costs of cylinder scales and the other scales, so that an apportionment was made on the basis of the relative sales of the various kinds of products."

"The commissions were paid by the defendant company substantially as follows:

"The agents would send in their orders and after the orders are

accepted, the commissions are calculated; thus, on a $100 sale there is a commission, we will say of 30%, or $30, which would be credited to the salesman's account, and of that $30, he would be immediately advanced 70% in cash, or $21, which would be charged to his account. The remaining 30% of his commission would be paid to him as his credit balance grows, if he has a credit balance.

199 If, of this $30 commission credited to him, there were, say, $15 charged back, he would then have a debit of $6, because he had been advanced $21. The loss on Agents' Accounts of $16,047.23 was the loss over and above that 30 per cent. of his commission after crediting the agent in each respective case. The proportion of the commissions not paid to the agent in the first instance was considered in arriving at the figure of $16,047.23."

"Referring now to the Plaintiff's Exhibit 9, I know that the pages one to eleven, inclusive, are all in lead pencil, and that a profit is shown on page 4 as follows:

Final net gain to September 1st, 1912	$66,627.72
This profit includes an item of:	
Canandian gain	$18,047.31
Also an item of royalties from W. & T. Avery Company, Birmingham, England	$555.12

This item represents royalties paid us by the Avery Company who manufacture the Toledo Scales in England under a license. This amount represents what was paid us for the manufacturing privilege during the eight months of 1912. Also from this amount of $66,627.72 there has been no deduction for Agents' Losses. We were carrying these Losses on Agents' Accounts as an asset at that time. During this period these losses as shown would be about $46,120.00."

"Thus the items, Canadian Gains, Royalties received from the Avery Company, and Losses on Agents' Accounts totaled $64,722.00, deducted from the paper profits of $66,627.72, shown in the statement offered in evidence.

Also there is no item in this statement for Depreciation on Buildings, and no item for Interest on Capital Invested, which, added to the other deductions, would total $83,722.00. If this deduction were made the result would be a loss of more than $17,000.00. The Loss on Agents' accounts represents commission paid to salesmen and later charge backs, over-drafts on their accounts, special advances, and debits for which they have no commission credits to offset. That is an actual loss. There is no value in it whatever."

"Referring to the statement for December, 1911, offered in evidence as Plaintiff's Exhibit No. 8, this statement shows a paper profit for the entire business of $43,765.73. This statement contains an item of Canadian profits of $24,128.85.

200	Royalties from W. & T. Avery Company	1,292.71
	Losses on Agents' Accounts, about	51,500.00

which would be the total amount of the debit balances.

The total of these figures of Canadian gains, foreign royalties, and loss on Agents' Accounts is about $77,000.00, or $24,000.00 more than the paper profits of $42,765.73 for the year 1911, without taking into consideration any item for Depreciation on Buildings or Interest on Capital Invested. If these items were taken into consideration, the actual losses on the year would have been something like $38,000.00.

"What has been said about the two statements, Plaintiff's Exhibits Nos. 8 and 9 applies equally true to the other exhibits, numbered Plaintiff's Exhibits 10, 11, 12, 13, 14, and 15.

"In none of these statements have we taken into consideration Losses on Agents' Accounts in arriving at the profits. These were carried as an asset for that purpose in making that memorandum from our books for our own convenience. We merely took that as an asset instead of a liability and profits were figured in all those accounts assuming they were good instead of bad."

Direct examination.

Continued by Mr. Zane:

"I have now found most of the vouchers requested by the counsel for complainant and relating to the Litigation and Patent Account, 1912.

(Certain of these vouchers were examined by counsel for complainant and offered in evidence.)

"On the ledger, the Litigation Account has an item of April 18, 1912. This voucher, Plaintiff's Exhibit 16, represents that payment. Said exhibit 16 is as follows:

April 1, 1912.

Toledo Computing Scale Company to Albert H. Mead, Dr.

Feb. 23, 1912. To cash paid for telegrams and expressage on briefs on case in U. S. Supreme Court in Writ of Error to Supreme Court of Massachusetts	$2.95
March 6-8, 1912. Expenses of trip to Washington in same case	62.15
To services in matter of preparation of brief for U. S. Supreme Court, review of records and trip to Washington in said case	600.00
Total services and disbursements	665.10

Plaintiff's Exhibit No. 17, the next voucher, represents the item of $507.94 in the litigation account of June, 1912, and is as follows:

June 6, 1912.

Toledo Computing Scale Company to Albert H. Meads, Dr.

1912.

February 23. To cash paid telegram to Clarence Brown in Cincinnati case	$.62
Feb. 26-29. To cash paid expenses of trip to Toledo	29.70
February 29. To cash paid Samuel M. Morgan, court reporter for copies of depositions of Daniel J. Moynihan, Samuel M. Hastings, Jacob Bear and Clayton R. Falkner, in Cincinnati case	33.45
February 29-March 1. To cash paid expenses of trip to Cincinnati	21.25
March 6. To cash paid telegram to Whitman & Elder	.62
March 17-20. Expenses of trip to Omaha	37.80
May 29. To cash paid for copies of depositions of Clarence H. Hapgood taken at Toledo and for commissioners' fee	34.50
Total expenses	$157.94

PLAINTIFF'S EXHIBIT No. 16.—*Continued.*

February 23-24. To attendance at the taking of deposition on behalf of the Computing Scale Company in the Cincinnati case and cross-examination of witnesses	$100.00
February 27-28. To two days spent at Toledo in matter of arranging of depositions and taking of Cincinnati case	100.00
March 31. To services in matter of trip to Cincinnati, Ohio, appearance in United States Court, filing of motion and affidavit for extension of time to take proofs	50.00
March 18-19. To trip Omaha, Nebraska, in matter of Dahlman case, arranging settlement, etc.	100.00
	$507.94

"The voucher for the entry in the litigation account of April to Elder, Whitman & Barnum is as follows:

202

PLAINTIFF'S EXHIBIT No. 18.

Boston, April 1, 1912.

Toledo Computing Scale Co., to Elder Whitman & Barnum, Dr., Counsellors at Law, Pemberton Building,
To professional services in arranging for hearing at Washington in the Moneyweight Scale Company case:

Correspondence with Washington and with A. H. Meads:
Conference with City Solicitor and attention to printing briefs:
1912.

January 24. 29. February 24, 27, 29. March 2, 6, 19.	$35.00
Cash paid, telegrams, etc.	$36.41

"In the litigation account the entry in July to Baxter & Van Dusen, Plaintiff's Exhibit No. 19, is as follows:

Omaha, Neb., 2/15/12.

Toledo Computing Scale Co., Toledo, Ohio, to Baxter & Van Dusen, Attorneys-at-Law, Omaha National Bank Building, Dr.

Services in Dahlman vs. Toledo Computing Scale Company $100.00

BAXTER & VAN DUSEN.

"In the Patent Expense Account on June 23rd the entry of $222.50 is in accordance with the following vouchers, Exhibits 20 and 20-A, of plaintiff:

Chicago, June 20, 1912.

Rector, Hibben, Davis & Macauley, to Eastman Bros., Law Printers, 542 S. Dearborn Street (Pontiac Building), Dr.
136 pp. Complainant's Record..... $122.40.

Received payment July 25, 1912.
EASTMAN BROS.,
Per O. C. E.

Toledo Computing Scale Co. vs. Anderson Tool Co. U. S. District Court, Dist. of Ind. Chg. Patent Ex. W. A Z.

203 PLAINTIFF'S EX. NO. 20-A.

Rector, Hibben, Davis & Macauley, To Eastman Bros., * Law Printers, 542 S. Dearborn Street, (Pontiac Building), Dr.

109 pp. Record of Allen De Vilbiss, Jr..... $98.10

Received payment July 25, 1912.
Eastman Bros.,
Per O. C. E.

Allen De Vilbiss, Jr. vs. Frank P. Dunn. U. S. Patent Office Intf. 33,713, Chg. Patent Exp. W. A. Z.

"In the Litigation Account is an entry of the following voucher under date of February 15, 1912, and the voucher is Plantiff's Exhibit 21, as follows:

TOLEDO COMPUTING SCALE CO.

VS.

THE COMPUTING SCALE CO.

Feb. 3, 1912.

Rector, Hibben, Davis & Macauley, to Kate S. Holmes, Dr.

Jan. 10–18.	To taking deposition of Mr. Kempster B. Miller and Mr. C. H. Hapgood, 177 pages, 2 carbons	$123.90
23.	To taking deposition of Mr. Milburn, 13 pages, 2 carbons.....	9.10
	To certifying and returning same.....	.70
		$133.70

"The statements rendered by Rector, Hibben, Davis & Macauley are subdivided for entries under different accounts. The statement rendered February 1st, 1912, charged to Patent Expenses, $1,486.36 and to Vulcanizer Expense, $15.00. This statement was entered in the record as Exhibit 22 as follows:

"Chicago, Feb. 1, 1912.

Toledo Computing Scale Company, Toledo, Ohio, to Rector, Hibben, Davis & Macauley, Dr.

1912.		Disbursements.
Jan.	1.	To telegram to Toledo (Smith patents suit). $.62
Jan.	8.	To cash paid Examiner for fees and services in re Toledo depositions in Computing Scales case on Smith patents..... 55.00

Jan.	3. To cash paid Clerk of Court at Chicago for fees in suit against Moneyweight Company	1.15
204		
Jan.	5. To telegram to Toledo (Smith patents suit).	.48
Jan.	5. To telegram to Dayton (Smith patents suit)	.38
Jan.	6. To telegram to Los Angeles (Smith Patents suit)	1.30
Jan.	6. To cost of drawings for Brazilian application on Fan Scale	25.00
Jan.	9. To telegram to Washington in re Computing Scale suit	1.32
Jan.	9. To copy of file of Smith patent No. 674,883	3.00
Jan.	9. To search for and cost of Pendulum Scale patents	17.00
Jan.	11. To telegram to Dayton in re Computing Scale suit	.48
Jan.	11. To first government fee on Wetzel application	15.00
Jan.	11. To certified copy of file wrapper of Smith patent no. 674,883	21.65
Jan.	13. To cash paid Chas. G. Milburn in re Milburn Scale	15.75
Jan.	15. To cash paid Dayton Examiner in re Dayton depositions	25.00
Jan.	15. To cash paid Dayton stenographer in re Dayton depositions	$22.00
Jan.	15. To cash paid J. H. Milburn in re Milburn Scale	30.95
Jan.	15. To copies of British patents on Weekly Watch	1.11
Jan.	17. To government fee for recording Wetzel assignment	1.00
Jan.	18. To cost of model for Patent Office	5.00
Jan.	18. To copies of drawings, Hapgood application No. 688,404	1.20
Jan.	11. To cash paid Patent Office in locating old models	2.00
Jan.	22. To your share of Washington expenses	20.00
Jan.	22. To telegram to Milburn at St. Louis	.85
Jan.	22. To telegram to Milburn at St. Louis	.85
Jan.	23. To telegram to Burkholder at New York	.89
Jan.	23. To telegram to Kerr at New York	.50
Jan.	23. To telegram to Deering at Colorado Springs	1.44
Jan.	25. To telegram to Davis at New York	.80
Jan.	25. To copies of patents for use in Smith case	1.10
Jan.	27. To copies of patents in re Templeton	2.10
Jan.	29. To expenses of trip to New York, Erie and Toledo in suit on Smith patents	80.00
Jan.	31. To cash, amount of foreign associates' bill of Jan. 24/12 in re Danish, German, Swedish, Austrian and British applications	98.48

Jan.	31.	To copies of patents.....	.35
Jan.	30.	To telegram to Scott at Washington.....	1.79
			456.34

Services.

Jan.	1–16.	To further services in Dayton Co.'s suit on Smith patents, including correspondence and conferences with Mr. Burkholder, and correspondence with Mr. Hapgood and Mr. Mr. Bergen and with Toledo notary, also review of papers in preparation for Western trip	50.00
Jan.	8, 9.	To further services in same case, including conferences with Mr. Miller, expert, and study of the case in that connection in preparation for conducting Mr. Miller's examination	$100.00
Jan.	10, 17.	To services, conducting examination of Mr. Miller	250.00
205			
Jan.	17–19.	To services, conducting examination of Mr. Hapgood	125.00
Jan.	16–23.	To further services in same case, correspondence with Mr. J. H. Milburn and Mr. Chas. Milburn, and taking the deposition of the latter.....	50.00
Jan.	24–25.	To time and services arranging for and making trip to New York and examining witnesses there as to Wise scale.....	100.00
Jan.	25–26.	To time and services making trip to Erie, Pa., and conferring there with Mr. Lord as to Wise scale.....	50.00
Jan.	26–27.	To time and services making trip to Toledo and taking deposition of J. H. Milburn, also conferring at factory with Messrs. Hapgoods and Burkholder.....	75.00
Jan.	29–31.	To services, corresponding with Messrs. Milburn, Lord and Burkholder regarding further proofs, and consideration in this connection of testimony already taken.....	25.00
Jan.	20.	To services in re Crane's inventions including examination of application papers relating to Crane's latest Electrict Lighting scheme, also considering Mr. Burkholder's proposition regarding the Freeman & Crane patent, and reporting to Mr. Theobald	25.00

Jan.	4. To services in re suit against Anderson Company, including instructions to Mr. Martindale at Indianapolis as to motion by defendant Company to close proofs and requiring bond	10.00
Jan.	12. To services, examination of Kron scale and report thereon	20.00
Jan.	17. To services, search at Washington in re Templeton application including examination of same and report on probable scope and validity of patent	75.00
Jan.	22. To services, examination of prior art and report to Toledo as to patentability and infringement of prior patents by structure of floating pendulum scale	75.00
Jan.	31. To services in Vulcanizer pad application, conisderation of references cited and preparation of amendment and argument	15.00
		1,501.34

Chg. Pat. Ex. 1,486.34.
Chg. Vulcar, 15.00.

Chicago, March 1, 1912.

Toledo Computing Scale Company, Toledo, Ohio, to Rector, Hibben, Davis & Macauley, Dr.

Disbursements.

1912.		
Feb.	1. To cost of British patents on Weekly Watch and for general use	$1.48
	3. To telegram to Erie	.40
	3. To telegram to Toledo	.46
	3. To telegram to Detroit	.44
	6. To cash paid Examiner for taking New York testimony in suits on Smith patent	26.25
	8. To telegram to Beaver Falls, Pa.	.98

206 "The entry in the Patent Expense Account is represented by a voucher in March, 1912, which is Plaintiff's Exhibit No. 23, and is as follows:

Feb.	10. To government fee on Wetzel Design application	$30.00
	10. To first government fee on Crane application	15.00
	10. To expense of trip to Detroit, Erie, Beaver Falls and Toledo on testimony in suit on Smith patent, including Examiner's fees on Beaver Falls testimony	69.00

	13. To cash paid Mr. Allen for services in investigation of Keystone scales.....	15.00
	13. To government fee recording Wetzel assignment	1.00
	13. To government fee recording Crane assignment	1.00
	18. To cash paid Patent Office for locating models for inspection	5.00
	26. To copy of drawings, Wetzel application.....	.30
	26. To copy of drawings, Crane application....	.30
	29. To copies of patents.....	.60
	29. To copies of drawings, Wetzel application..	.90
	Total Disbursements	$168.11

Services.

Feb.	1. To services (Jan. 6th) of Mr. Rector in consultation with Mr. Davis as to defenses to suit on Smith patents and preparation for Mr. Miller's testimony.....	10.00
	3–20. To services of Mr. Davis on Smith patents, including correspondence with Messrs. Milburn, Hapgood, Burkholder, Lord and Fuller, long distance telephoning to Burkholder at Erie and similar communication with Mr. Macauley at Toledo, preparation of Burkholder affidavit, revision of depositions taken at Detroit, Toledo, Erie and Beaver Falls, arranging with complainant's attorneys for further time, and attendance at Chicago office of complainant's attorneys upon examination of a witness in rebuttal	100.00
Feb.	17. To services in Hapgood suit on Bane Crane patent, including examination of McGrew scale and reviewing others, and attendance upon examination of Hopkins at Chicago	35.00
	21. To services in your suit against Moneyweight Company on De Vilbiss Reissue patent, including examination of papers served upon us relating to petition to reopen, and review of the record in the case in this connection	25.00
	3. To services in re De Vilbliss-Dunn Interference, including preparation of stipulation for extension of times for taking testimony, etc.	10.00
	10. To services, preparation and filing of Crane application on Electric Scale.....	50.00

207	6–9.	To services, preparation for and attendance on testimony at Detroit, Erie, Beaver Falls and Toledo in suit on Smith patents....	200.00
	12.	To services, opinion on infringement of Toledo Company patent on cylinder scale by Standard Scale.....	30.00
	13.	To services, preparation of Hapgood application on Thermostatic dash pot.....	50.00
	15.	To services, preparation of Hapgood application on scale with thermostat segment...	50.00
Feb.	19.	To services, opinion as to scope and validity of Ozias patent	20.00
	21.	To services, letter to Angldile Company as to sale of infringing Dayton scale by their Minneapolis agent	10.00
	21.	To services, reviewing of testimony of Dayton expert Pool with reference to Milburn scale	10.00
	26 & 27.	To services, interviews at Chicago with Burkholder and Saylor as to Saylor applications, and examination of files, references, etc., and opinion on subject.....	65.00
	27.	To services in Wetzel application No. 573,-663, consideration of references and preparation of amendment and argument.....	10.00
	28 & 29.	To services trip to Toledo, examination of inventions submitted with a view to filing applications, interviewing witnesses, examination of witnesses at Toledo in Anderson suit	100.00
			$943.11

Chg. Patent Exp. Gen. Ledger.
Cr. R. H. D. & M. Private Ledger.

(This is a duplicate of the preceding page.)

"The April bill of Rector, Hibben, Davis & Macauley was charged as follows in the Patent Expense, and is Plaintiff's Exhibit No. 24:

PLAINTIFF'S EXHIBIT 24.

Chicago, Apr. 1, 1912.

Toledo Computing Scale Company, Toledo, Ohio, to Rector, Hibben, Davis & Macauley, Dr.

Disbursements.

1912.

Mar.	1.	To telegram (Feb. 27) to Indianapolis.....	$.31
	1.	To express to Toledo (Feb. 3) Crane application	.35
	1.	To telegram (Feb. 9) from Macauley.....	.42
Mar.	1.	To telegram (Jan. 16) from Macauley.....	.65
	1.	To telegram (Feb. 10) from Macauley.....	.65
	1.	To express to Toledo (Feb. 10).....	.30
208	1.	To express to Washington (Feb. 10).....	.25
	1.	To express to Washington (Feb. 17).....	.35
	1.	To express from Washington (Feb. 17).....	.35
	1.	To express to Toledo (Feb. 27) Hapgood cases.	.30
	1.	To express to Washington (Jan. 8) Wetzel cases	.35
	1.	To telegram from Washington (Jan. 16)....	.65
	1.	To telegram to Milburn (Jan. 24).....	.70
	1.	To drawing for Crane application.....	5.00
	1.	To drawings for Wetzel application.....	10.00
	1.	To telegram (Jan. 16) to Washington.....	.53
	1.	To telegram (Jan. 19) to Mr. Theobald.....	.44
	1.	To telegram (Jan. 19) Hapgood to Toledo Co..	.30
	6.	To telegram to Toledo.....	.30
	5.	To services of Washington attorneys in re Mr. Koekne (Anderson suit)	2.00
	7.	To cost of drawings for Brazilian application covering latest model of scale.....	11.25
	8.	To certified copy of De Vilbiss application No. 621,297	5.65
	8.	To express to Minneapolis.....	.35
	12.	To expenses of trip to Toledo, Anderson suit..	19.50
	13.	To telegram to Davis.....	.59
	13.	To telegram to Davis.....	.35
Mar.	16.	To cost of patent drawings for application on Vulcanizer	15.00
	18.	To telegram to Toledo.....	.30
	19.	To expenses of Boston trip, suit on Smith patents	75.00
	19.	To telegram to Indianapolis.....	.25
	19.	To express to Toledo, Bancroft Vulcanizer case	.30

20.	To copies of two German patents	1.02
20.	To copies of ten British patents	1.84
23.	To telegram to Toledo (in February)	.50
23.	To telegram to St. Louis (in February)	.35
25.	To first government fee Hapgood, Scale (case A)	15.00
25.	To first government Hapgood, Dash pot (Case B)	15.00
25.	To first government fee Wetzel, Scale	15.00
25.	To express to Washington, Hapgood and Wetzel cases	.35
26.	To cash paid examiner for fees for Detroit testimony in suit of Dayton Co. v. Toledo Co.	13.00
26.	To expenses of trip to Toledo	35.10
26.	To telegram to Toledo	.62
26.	To telegram to Toledo	.32
27.	To telegram to Toledo	.30
28.	To government fee recording 3 assignments, Wetzel and Hapgood	3.00
30.	To copies of patents	.35
30.	To expenses (your share) of trip to Boston in Dayton Co. suit on Smith patents	62.50
Mar. 30.	To expenses of trip to Buffalo and Detroit in De Vilbiss-Dunn Interference, including $12.00 notary fees at Buffalo	59.00

209 Services.

Mar. —.	To services (Mr. Davis) in Dayton Co.'s suit on Smith patents, including preparation for and cross examination of complainant's witness Pool	25.00
	To further services (Mr. Davis) in same suit, including trip to Boston, attending there on examination of complainant's witnesses, Monaghan and Sullivan, and cross examining them, also examining witness at Boston on your behalf	200.00
	To further services (Mr. Davis) in same suit including second trip to Boston, attending there on examination of complainant's witness Bell, and cross examining him	125.00
Mar. 1-4.	To services in suit against Anderson Co. including preparation for and taking of depositions at Toledo	150.00
12.	To services, opinion as to Crane Thermostat	15.00
14.	To services to date in De Vilbiss-Dunn Interference on Normally Raised Pendulum, including examination of papers in case and consideration of record in Poll-Dunn Interference preparatory to taking of testimony	100.00

	15.	To services, consideration of question of rebuilding of the Dayton Scale, correspondence and letter of advice	10.00
	16.	To services in re British application on Church cylinder scale, preparation of letter of instructions to London associates	10.00
	16.	To services, preparation of Bancroft application for Vulcanizer	50.00
Mar.	22.	To further services to date in De Vilbiss-Dunn Interference, additional preparation for and taking of testimony therein at Toledo, trip to Toledo and also considering various scale matters at factory	150.00
	25.	To further services in De Vilbiss-Dunn Interference including correspondence, making arrangements for further testimony and other preparation therefor	25.00
	29.	To further services to date in same Interference, trip to Detroit and Buffalo and examining witnesses there	100.00
	30.	To further services in same Interference, in re opposition to motion of Dunn to admit Pool-Dunn record, preparation of brief on behalf of Toledo Co.	20.00
	1.	To services in re German application on Bancroft Vulcanizer, preparation of letter of instructions to London associates	5.00
	14.	To same in re British application	5.00
			$1,365.00

Chg. Vulcar 75.00.
Chg. Patents 1,290.99.
Cr. R. H. D. & M.
April Business.

210 "The following voucher for the May 1st bill of Rector, Hibben, Davis & Macauley is as follows, Plaintiff's Exhibit No. 25:

Chicago, May 1, 1912.

Toledo Computing Scale Company, Toledo, Ohio, to Rector, Hibben, Davis & Macauley, Dr.

Disbursements.

1912.

Apr.	1.	To express on papers from Buffalo	$.90
	2.	To express on papers to Toledo	.35
	4.	To express on papers to Toledo	.35
	6.	To services of Washington associates in re search and report on Ozias patent No. 648,289, Thermostatic scales	50.00

	10. To express to Toledo	1.10
	12. To blue prints in De Vilbiss application No. 209,396	.16
	12. To first government fee Ecklund application	15.00
Apr.	13. To telegram to Toledo	.30
	15. To cash paid Notary for taking cross deposition	11.00
	15. To express to Toledo on Dunn-Louiso scale	1.25
	16. To telegram from L. R. Works as to testimony	.75
	17. To express to Toledo on three boxes	2.93
	22. To express to Toledo	.65
	23. To patent drawing for Ecklund application	5.00
	26. To Examiner's fees on Detroit testimony in Dunn Interference	11.00
	30. To copy of British patent	.18
	30. To copies of patents	.55
	1. To services of Washington associates in re search as to Saylor Grocers Cabinet	25.00
	11. To copies of drawings Hapgood application No. 686,978	.60
	11. To copies of drawings Wetzel application No. 686,827	.30
	11. To copies of drawings Hapgood application No. 686,979	.30
	15. To government fee recording Ecklund assignment	1.00
	25. To services of Washington associate in opposition of Dunn's motion in De Vilbiss-Dunn Interference	10.00
	26. To telgram to Toledo	.36
	24. To cable to London in re Tax on British patent	1.50
	30. To copies of patents	.55
	Total Disbursements	$141.08

211 Services.

Apr.	23. To services of Mr. Rector in re Moneyweight Company petition to Court of Appeals to reopen old suit on De Vilbiss reissue patent, examination of papers and authorities and preparation of memorandum brief and attendance on Court of Appeals and argument in opposition to petition	150.00
	1. To services in re Chapman application No. 544,344 on *bearing* consideration of references and preparation of amendment	10.00
	2. To same in re De Vilbiss application No. 318,540.	10.00
	3. To same in re De Vilbiss application No. 569,191.	10.00
	3. To same in re Dunn application of Law Platform Scale	10.00
	8. To same in re Mingle application No. 566,566	10.00

	8. To services in De Vilbiss-Dunn Interference, preparation of letter of instructions for attending taking of Alter deposition at Los Angeles..	15.00
	13. To services, consideration of proposed purchase of Louiso share in scale, examination of model of scale, consideration of question of invention between Dunn and Louiso and preparation of Ecklund application on similar scale.....	75.00
	15. To services, in Pool-Dunn Interference, review of testimony preparatory to attending depositions of witnesses for Dunn in interference of De Vilbiss vs. Dunn	25.00
	16. To services, supplemental report upon the Ozias thermostat scale patent and its bearing upon the Hapgood thermostat scale application.....	25.00
Apr.	20. To services in De Vilbiss-Dunn interference, preparation of brief in opposition to motion to admit the De Vilbiss deposition.....	25.00
	26. To services in same interference, attendance on taking of Drake deposition at Chicago.....	25.00
	29. To services to date in same interference, preparation for taking of testimony at Hamilton.....	25.00
	30. To services in same case, attendance on taking of Testimony at Hamilton, trip there, etc.....	50.00
	30. To services of Mr. Davis to date in Dayton Co. suit on Smith patent including correspondence with Mr. Akerman and with London attorneys as to Wise scale attending taking of Thomas Sullivan's deposition at Chicago and cross examining him, preparing draft of amendment to answer to conform with proofs regarding prior use and prior patents discovered since filing of answer, putting the record in condition for printing	100.00
	8-12. To services in British and German applications on Bancroft Vulcanizer, including letters of instruction to London associates.....	10.00
212		
	20. To services, replies to various letters of Burkholder regarding proposed foreign applications, trademark registrations, tax matters, etc.....	5.00
		$721.08

Chg. Patent Expense 711.08.
Chg. Vulcar patent exp. 10.00.
Cr. R. H. D. & M. 721.08.

"The following voucher corresponds to the June entry in the Patent Expense Account, Plaintiff's Exhibit No. 26:

Chicago, June 1, 1912.

Toledo Computing Scale Company, Toledo, Ohio, to Rector, Hibben, Davis & Macauley, Dr.

Disbursements.

1912.		
May 1.	To copy of Ecklund drawings	.30
3.	To expenses Hamilton trip in Anderson Interference	34.50
6.	To telegram to Indianapolis in Anderson Interference	.35
6.	To telegram to Indianapolis in Anderson Intf.	.25
7.	To final government fee, De Vilbiss application, Accumulative Chart Scale	20.00
7.	To express from Hamilton	.30
10.	To express from Washington on Exhibit scale	1.00
May 22.	To final government fee Wetzel application No. 321,369	20.00
29.	To expenses of Indianapolis trip (May 7)	11.10
29.	To expenses of Toledo trip (May 24)	19.50
29.	To exhibit drawings of Culmer and Milburn scales	8.00
31.	To copies of foreign patents	1.11
31.	To copies of patents	.30

Services.

May 2.	To services to date in De Vilbiss-Dunn Interference, attending depositions on behalf of Dunn at Hamilton, trip there and cross examining witnesses	100.00
7.	To services in re Swedish applications, examination of papers in cases and preparation of instructions to foreign associates	15.00
8.	To services to date in De Vilbiss-Dunn Interference, attendance depositions on behalf of Dunn at Indianapolis, trip there and cross examination of witnesses	50.00
14.	To services, preparation of agreement between Dunn and Louiso and Toledo Company and between Dunn and said Company	25.00
24.	To services, trip to Toledo on different matters, including inspection of model scale for use in De Vilbiss-Dunn Interference, examination into various matters at factory, and consultations with Messrs. Burkholder, Hapgood and others	50.00

May 31.	To services to date in suit of Dayton Company on Smith patents, including review of Culmer's		
213	testimony and writing Mr. Burkholder on subject of model, also preparing amendment to answer to conform it with the proofs, printed record		75.00
	Chg. Patents.		$431.71

"The entry of $1,887.44, charged in the Patent Account, is on the following voucher, Plaintiff's Exhibit No. 27:

Chicago, July 1, 1912.

Toledo Computing Scale Company, Toledo Ohio, to Rector, Hibben, Davis & Macauley, Dr.

Disbursements.

1912.			
June	1.	To telegram (May 22) to Toledo	.30
	1.	To telegram (May 28) to Toledo	.50
	1.	To telegram (May 29) to Toledo	.30
	1.	To cost of obtaining extension of time to pay tax on Rakestraw British patent	6.13
	1.	To copy of British patent	.18
	3.	To telegram to Toledo	.48
	7.	To final government fee on Templeton application	20.00
	10.	To cash paid Examiner for taking testimony in Dunn Interference	4.40
	11.	To telegram to Toledo	.44
	11.	To telegram from Washington	.53
	13.	To telegram to Indianapolis	.25
	14.	To cash paid Italian consul at Cleveland for legalizing papers	4.00
	14.	To express to Washington	.25
	17.	To express to Indianapolis	1.25
	17.	To telegram to Toledo	.56
	19.	To government fee for third term on De Vilbiss Canadian patent No. 68,259	20.00
	20.	To express to Toledo	.50
June	22.	To expenses of Indianapolis trip, Anderson suit.	20.00
	24.	To express from Washington on Italian application drawings	.35
	24.	To cost of additional search at Washington as to Ozias Thermostat patent	50.00
	25.	To telegram to Toledo	.32
	29.	To copies of patents	1.10
	29.	To expenses of trip to Indianapolis, Anderson suit	22.50
	29.	To cost of drawings for Italian case	18.10

214 Services.

June 1. To services (May 13) in re Bankcroft foreign cases on Vulcanizer letter of instructions to foreign associates ..... 5.00 Vulcar.

1-17. To services of Mr. Davis and Mr. Rector in preparation for and argument of suit of the Computing Scale Company against Toledo Computing Scale Co. on Smith patents (June 13) and subsequent preparation of brief including time spent in search for and examination of authorities 750.00

3. To services in De Vilbiss-Dunn interference, attendance on depositions of Wetzel and Davis.. 25.00

5. To services in Computing Scale Company suit on Smith patents, perparation and presentation of motion to Court for a postponement of the final hearing 25.00

7. To service, consideration of Templeton inventions and preparation of Templeton contract.. 20.00

16. To services, preparation of Hapgood application on Counting Scale..... 50.00

June 13-17. To services in re Stimpson company scales, examination of Stimpson Co. circular and consideration of same in connection with Toledo Co. patents and correspondence with Mr. Theobald 10.00

20-25. To attendance on Court in suit of the Computing Scale Co. against Toledo Computing Scale Co. on Smith patents, consultation with Mr. Theobald at Chicago on June 22 and preparation of appeal papers and petition for suspension of injunction and attendance on court on June 24th and 25th, and presentation of same..... 100.00

24. To services, interviews with Mr. Decker and review of vulcanizer patent situation with him.. 15.00 Vulcar.

24. To services, interviews with Gilfillan and Anderson as to Chicago Scale and Gilfillan patents.. 10.00

29. To additional services (Mr. Rector) during June in re Ozias thermostat patent, examination of patent and prior art, consultation with Mr. Macauley, correspondence with Mr. Theobald and instructions to Washington associate as to further search or prior art 25.00

To services of Mr. Davis and Mr. Macauley in your suit against Anderson Tool Company, examination and consideration of complainant's and defendant's records and examining au-

	thorities and also numerous prior patents and other exhibits and compiling voluminous reference notes, all in preparation for final hearing	300.00
	To further time and services of Mr. Davis and Mr. Macauley in same case, trip to Indianapolis, attending Court and making oral argument..	350.00
215		
June 29.	To services to date in re Italian application and proposed Dutch applications on Fan and Cylinder Scales, correspondence, procuring drawings and legalized powers, reviewing and selecting claims and preparation of new claims....	50.00
		$1,907.44

Chg. Vulcar 20.00.
Chg. Patents 1,887.44.
Cr. R. H. D. & M. 1,907.44.

"The following vouchers are all for entries in the Patent Expense Account:

PLAINTIFF'S EXHIBIT No. 28.

Chicago, August 1, 1912.

Toledo Computing Scale Company, Toledo, Ohio, to Rector, Hibben, Davis & Macauley, Dr.

Disbursements.

1912.		
July 11.	To express to Washington in De Vilbiss-Dunn Interference	$1.00
July 10.	To express to Washington in De Vilbiss-Dunn Interference	2.81
13.	To telegram to Toledo	.56
10.	To telegram to New York for Mr. Meads	1.22
1.	To cost of Weekly Watch of British patents June, 1912 to June 1913	21.50
1.	To copies of British patents	1.11
22.	To cash paid Clerk of District Court for transcript of record for appeal in suit on Smith patents, and balance of costs due	201.95
22.	To cash, first government fee on Hapgood application on Counting Scale	15.00
23.	To cash, paid Clerk of Court of Appeals as deposit for costs on filing transcript in suit on Smith patents	25.00
13.	To cash, express to Toledo, Hapgood application.	.30
22.	To cash, express to Washington Hapgood application	.35
31.	To cash, copies of patents	.20

	31. To cash, cost of drawings for Hapgood application (Counting Scale)	15.00
	25. To cash, government fee, recording Hapgood assignment	1.00
	16. To cash, disbursements and services of Washington attorney in re exhibits in De Vilbiss-Dunn interference	6.50
	18. To cash, telegram from Washington	.59
	31. To cash, paid Australian agent on Cylinder Scale application	3.31
	21. To cash, telephone toll—Rector to Theobald	2.05
216		
July	25. To cash, telephone toll—Rector to Theobald	1.25
	30. To cash, paid London agents in re Fan Scale and Cylinder Scale Italian applications	70.00
	To cash, expenses of Washington trip, De Vilbiss-Dunn interference	64.50
	31. To cash paid Clerk of Court of Appeals at Chicago for printing of appeal records, etc. in suit on Smith patents	500.00
	31. To cash, balance of Macauley's expenses on trip Feb.-March, 1912 not heretofore entered	40.00
		$978.20

Services.

1912.		
July	1. To services of Mr. Rector in re appeals in suit of Computing Scale Company on Smith patents, securing and arranging material for transcript, and instructing Clerk in reference to same	10.00
	13. To further services to date on above appeal, consultation with and assistance to Clerk of Court in making up transcript, correspondence with complainant's counsel and preparation of stipulation respecting exhibits	25.00
	31. To services of Mr. Davis and Mr. Macauley to date in suit against Anderson Tool Co. including preparation of brief	300.00
	31. To services to date in suit of Hayward v. Toledo Co. including review of case and correspondence with you and others concerning further pursuit of defense materials, and collecting various additional prior patents	25.00
	2. To services, investigation of Gilfillan patents and the Chicago Computing Scale	15.00
July	10. To services in Burkholder application No. 632,-714, consideration of references cited and preparation of amendment	10.00

	16. To services to date in De Vilbiss-Dunn interference, preparation of printed brief, trip to Washington and oral agreement before Examiner of Interferences	250.00
	29. To services in Burkholder application No. 583,-676, consideration of prior art and preparation of amendment	10.00
	31. To same in Burkholder application No. 590351.	10.00
		$1,663.20

Credit.

July	23. By cash, to cover cost of transcript in suit on Smith patents	201.95
	25. By cash, to cover estimated cost of printing, appeal record and for deposit placed with Clerk in suit on Smith patents	525.00
	31. By cash, advanced to Macauley on account of expenses of trip Feb.-March, 1912	40.00
	Balance due	$866.25

Chg. Patents $866.25.

217 "The Service charge which is shown separately in the year 1912 is combined with the Refinishing expense in the account of 1911. Our commission rates to agents depend on the different grades of scales sold. I do not remember what the commission rate on the scales No-. 81 or 181 was, but on the 381 we pay a commission of 35%. Our charges in the year 1911 for commissions applicable to the cylinder scales entered in this Account are $81,617.17, as shown on page 25 of the Account. The number of cylinder scales sold during this period is shown in the first pages of the Account and are 2,177. By dividing the number of scales sold into the commission charged, I find that the average commission on cylinder scales amounted to $37.49. By striking an average in the same manner for the 1912 period I find the average commission during the 1912 period is $39.69. Our highest rate of commission to salesmen was 35%, but a manager's rate on a state agency might be 40%, that is, he would get two commissions, the salesman's commission and an additional or managerial commission. I cannot say whether in any case our commission exceeds 40%.

Redirect examination.

By Mr. Zane:

"The item of Foreign Sales was for scales not made in England. The royalties referred to scales manufactured in England. We get royalty from the W. & T. Avery Company in Birmingham, England, for the scales sold in the territory they control in the British Isles. We have other foreign sales that cover shipments made from Toledo

to South America, but wherever those sales are made covered by the words 'foreign sales,' the shipments are made from Toledo."

"The item 'Increase in United States stock, $31,763.13, on page 4 of Plaintiff's Exhibit No. 9, is a valuation of the completed scales on hand at 33 1/3 per cent. of the list price. The statements show increase or decrease of stock for the month. We inventory the completed scales, consignment of stock, each month, and show the increase or decrease in the inventory. We have also an inventory of Canadian stock each month, that is finished stock and completed scales. We have also an item, 'Net gain sales and stock.'

218 "We have a branch office in Denver, but I do not know just what territory is covered thereby—certain parts of Colorado and Wyoming—but how far west I am not sure. The branch office at Denver is included in the San Francisco District and is under the supervision of the District Manager at San Francisco. We do not have a separate district manager for Denver territory.

"The item in the 1911 'Losses on Customers' Accounts,' cover actual losses on Customers' Accounts in the form of Bills Receivable and Accounts Receivable. In my Account I have pro rated these Losses on Customers' Accounts to the cylinder scales listed in the Account on the basis of sales.

"The item, 'Depreciation on Buildings,' $303.13, for the 1911 period was figured on a 5% basis on the sales of the cylinder scales listed in the Account compared with the total sales of all scales during the same period. We took 10/12th of the amount at 5% and applied it to this Account. The Interest on Capital Invested was similarly treated.

"In the statement, Complainant's Exhibit 15, in the year ending December 31st, 1905, we have an item

Patents $259,440.05

In our statement for August 31st, 1912, we have a similar item

Patents $250,000.00

Ever since I was connected with the Toledo Company, I have seen the figure, $250,000.00 used as the value of patents.

"With regard to Agents' Commission, we carry on our books an account for each agent. When an agent sells a scale we charge the general account, Agents' Commissions, and credit the individual agent's commission account. Thus if the commission is $30 we credit the agent with $30.00, and we charge our ledger account, the general account, agents' commissions, with $30. We charge commissions with that amount, and when the remittance is made on that particular order or sale, he is charged with the amount of that remittance, which in case of a $30 commission would be $21. I mean by remittance the cash advanced to the agent on that particular order. The customer's first payment is not applied to the payment of the agent's commission, but is sent directly to the com-

219 pany, and the company remits to the agent 70 per cent. of whatever commission is due him on the sale. The agent gets

the remainder of his commission whenever it is coming to him. The $21 is remitted to him, irrespective of the state of his account, but there would be some slight deduction for money previously advanced. If after the $21 has been paid to the agent the scale is not paid for, or the sale fails to go through, we would charge against the agent's account the amount of the commission, and credit to commissions the amount that is liable to charge back. He is charged with all the commission on the unpaid balance due on the scale. I testified on cross examination that the final net gain for the eight months period of 1912 was $66,627.72, after deducting the vulcanizer loss. The vulcanizer has nothing to do with scales."

"I also said that during this same period we had as an asset in the statement the balances on agents' accounts. That item is on page 10 of Exhibit 10 of plaintiff, agents' debit balances. It represents moneys advanced and charged to agents, and it should be offset by the commissions advanced. That is why we enter it as an asset. It is an account due to the company. It is not worth much. On page 9 I have two items, agents' credit balances, $30,766.75, and agents' prospective commissions, $68,990.78."

"The debit balances would not be met by the prospective. The reserve below the amount of agents' debit balances is deducted therefrom. That reserve is to meet losses. The agents' debit balances were $161,554.90 and the reserve was $3,403.17. That reserve was established to meet losses in that account. The net asset was, after deduction of reserve, $158,151.73. There is not enough reserve to cover losses.

"We regard the agents' debits as losses because we have never been able to collect them. Our reserve on January 1, 1912, for agents' accounts losses was $210. On August 31, 1912, it was about $3,400. We had charged it with certain losses, and credited it with collections on any account closed into the reserve. In some cases we have recoveries, or possibly the agent has started in to work for us and works out, or reduces the amount owing, in which case we reinstate his account. In figuring out the particular losses on agents' accounts for this year, we add together the figure $34,623.91,
220 showing the increase in the accounts of agents' debits, and $11,496.10, the total shown on the ledger as increase on the reserve account; $10,000 was an increase in reserve on January 31st. I added the credits to that reserve account as a loss. We carry these accounts as assets because they are moneys owing to the company, though they are regarded as a worthless asset. Our statement for August 31, 1912, is simply a compilation of the accounts as they are shown on the books, and any gains shown are book gains, and they are made by figuring these things which, I say, are bad as assets, at their face value.

"In the year 1911 I got Losses on Agents' Accounts, $51,500, by the increase in debits of $16,146.57. That is an increase in apparent assets, and was so carried as assets in adding to this increase the amounts charged in the reserve accounts, on page 72 of the ledger, $35,446.36, and thus obtained the loss for the entire year. This Reserve Account on page 71 of the ledger includes an entry

from Undivided Profits, $25,867.34. That was a credit to this account, and a charge against Undivided Profits. We credited this amount to Undivided Profits by opening up an account for Exchange Competitive Scales. We found an asset that had not been taken account of. The asset was not on the books, and I used that asset, which I did not have on the books, to put into our reserve for losses on agents' accounts. Those losses had not been made in 1911. I was balancing off losses that had been made in preceding years. In the year 1912 we showed an increase in stock and in Canadian stock."

"We made corporation tax returns on our income or rather profits for the year 1912 and we have tax receipts therefor. (Counsel then requested that the Witness produce the tax receipts for 1912, 1911, 1910 and 1909) and upon their introduction the witness stated that the Toledo Company paid a corporation tax of $1,139.12 for the year 1912, so that the statement shows profits of $113,912 for the year 1912. For the year 1911, according to the tax receipt, we show profits of $28,276, and we paid $282.76. For the year 1910 the amount of the receipt is $930.07. That shows profits of $93,007.

For the year 1909 by this receipt we show profits of $154,716,
221 and the tax receipt is for $1,547.16. I do not remember just what the tax was in those years, but I think it was one per cent. on the profits over an allowance of $5,000.00. There were exceptions and I do not know what they were, the law would show this any way.

These income tax receipts are then received in evidence as Complainant Exhibits Nos. 29, 30, 31, 32, and read as follows:

PLAINTIFF'S EXHIBIT #29.

(Form No. 1—Revised July 14, 1911.)

No. B 336,820. Page 12, Line 4.

United States Internal Revenue,

Collector's Office, 10th District of Ohio.

Toledo, O., June 27, 1913.

Received of the Toledo Computing Scale Co., Toledo, O.,
Eleven hundred thirty-nine—12/100 dollars, corporation tax 1912..... $1,139.12
Five per cent penalty..... .....
Interest, for — months..... .....

Total $1,139.12

said amount of Tax being assessed on corporation list for Feb. —, 1913.

W. V. McMAKEN,
Coll'r.

By W. CORBETT,
Deputy Coll'r.

$1,139.12.

PLAINTIFF'S EXHIBIT #30.

(Form No. 1—Revised July 14, 1911.)

No. B 259,987. Page 14, Line 13.

United States Internal Revenue,

Collector's Office, 10th District of Ohio.

Toledo, O., Jun. 10, 1912.

Received of the Toledo Computing Scale Co., To-
222 ledo, O. Two hundred eighty-two—76/100 dol-
lars, Corporation Tax 1911 ..... $282.76
Five per cent penalty ....
Interest, for — months ....

Total $282.76

said amount of Tax being assessed on Corporation list for Feb. 1912.

W. V. McMAKEN,
Coll'r,

By O. G. CHENEY,
Deputy Coll'r.

$282.76.

PLAINTIFF'S EXHIBIT #31.

(Form No. 1—Revised June, 1908.)

No. B 127,921. Page 30, Line 31.

United States Internal Revenue,

Collector's Office, 10th District of Ohio.

Toledo, O., June 31, 1911.

Received of the Toledo Computing Scale Co., Toledo, O.,
Nine hundred thirty—07/100 dollars, Excise Tax on
Corporation 1910 ..... $930.07
Five per cent penalty ....
Interest — years — months ....

Total $930.07

said amount of Tax being assessed on Corporation list for Feb. — 1911.

W. V. McMAKEN,
Coll'r,

By O. G. CHENEY,
Deputy Coll'r.

$930.07.

223 PLAINTIFF'S EXHIBIT #32.

(Form No. 1—Revised June, 1908.)

No. B 47174. Page 31, Line 20.

United States Internal Revenue,

Collector's Office, 10th District of Ohio.

Toledo, Ohio, Jun. 30, 1910.

Received of the Toledo Computing Scale Co., Toledo, Ohio, fifteen hundred forty-even—16/100 dollars, Excise Tax on Corporation $1,547.16
Five per cent penalty ....
Interest — years — months ....

Total $1,547.16

Paid under protest, said amount of Tax being assessed on Corporation list for Mar. 1910.

W. V. McMAKEN,
Coll'r,
By O. G. CHENEY,
Deputy Coll'r.

$1,547.16.

Mr. Zane:

Q. The losses for the year 1911 on Agents' Accounts are made up of $16,146.57 and $35,446.30?
A. Yes, sir.
Q. That's for 1911. I misled you before by using the 1912 figures. That makes $51,592.87?
A. Yes, sir.
Q. Which by this figuring of losses, figuring them as a loss, has been wiped out of those Agent's Debit Balances, has it not, if you figure that as a loss and say that is the true statement, then you have wiped out that much of the Agent's Debit Balances.

Mr. Meads: I object to that question. That is not what the witness said and is not the fact. He may have wiped out that amount of assets but he has not wiped it out of Agent's Debit Balance.

Mr. Zane:

Q. I am saying if you figure that as a loss and consider that as showing a loss in your business, you have then reduced the
224 balance $51,592.87, the Agent's Debit Balance, have you not?
A. Well, you would reduce them.

Q. Yes. In other words, if on the statement for the year 1911 you had figured the Increase in Agent's Debit Balances $16,146.57 and all the amounts added to the Reserve Account for losses on Agents' Accounts, if you had figured those as a loss, making a total loss of $51,592.87, you would start in the year 1912 with your Agent's Debit Balances reduced that amount, would you not?

A. Yes, you would.

Q. But as a matter of fact on these accounts you carried over the Agent's Debit Balances without any reduction at all for losses, didn't you, and the same Agent's Debit Balances appear in the statement for the first eight months of 1912, do they not?

A. Whatever is charged off on the Agent's Debit Balances will not appear on this.

Q. Yes, but nothing was charged off, was it, of this amount of $51,592.87, nothing was charged off?

A. Yes, it was.

Q. What was?

A. $35,446.30 were charged against Reserve which would be a credit to the Agent's Debit Balances.

Q. Yes, and the other amount, $16,146.57, the Increase in Agent's Debit Accounts was carried right over into the 1912 statement, was it not?

A. The increase, yes.

Q. Now if you take the Debit Balance of the Agents for the year 1912 and the amount you have carried them over on these accounts, you are using that amount, $16,146.57 which you have figured as a loss in the preceding year, over again to make an additional loss in the year 1912, are you not?

I draw your attention to the Ledger of 1911 to the account called Agents' Ledger on page 3 of the Ledger of 1911. Where in your statement of 1911 for the year does that account appear?

A. It appears on page 1 as Agents' Debit Balances and on page 2 as Agent's Credit Balances.

Q. How do you deduct these figures on your statement for the year from this account on the ledger?

225 A. From the Agent's Trial Balance Books.

Q. Now, have you got a book called the Agent's Trial Balance Book?

A. Agent's Ledger Trial Balance Books.

Q. Can you produce the one for the year 1911?

A. Yes, sir.

Q. I wish you would.

A. (Witness produces books.)

Q. Will you let us see the one for 1911, just the one for 1911?

A. There are several of those books here.

Mr. Meads: Suppose we get some questions here and answers. Mr. Zolg, let him prop-und his questions and then you sit down and answer them as they come along; that's the only orderly way to get at this thing.

Mr. Zane:

Q. Now, will you identify on the Agents' Trial Balance, the balance at the end of the year 1911 which is $93,311.37 on the account, Agent's Ledger, page 3 of the Ledger of 1911; it is the year 1911.

Mr. Zolg, we have waited a long time for you to identify this balance on the Agent's Ledger Account and I think we will have to go on to something else. Have you an idea how long it will take you to identify that thing on the Agent's Ledger, the Trial balance?

A. Not if I find the right figures?

Q. Well, if you find the right figures?

A. If I find the right figures, it won't take very long.

Q. Well, what prevents you from finding the right figures?

(No Answer.)

Mr. Zane: Your Honor please, we will let it go and we will go to something else.

Q. That's all, Mr. Zolg, we will try something else.

Mr. Zolg, on page 2 of this ledger of 1911 you show a balance of Bills Receivable, the Bills Receivable Account, $570,530.39. Then you show Adjustment of Customer's Accounts a further debit to Bills Receivable of $6,694.55. Where did you get that item, Adjustment of customer's Accounts, $6,694.55? I mean how was it arrived at.

A. I don't know exactly how that amount was arrived at. The voucher will likely tell us, but I think that in taking an inventory of the bills receivable items we found that much more in the
226 bills receivable unpaid and uncharged and made an entry for it. I think that's the way it was done, but the voucher showing that entry ought to explain it.

Q. It is an increased asset, is it not?

A. Yes, sir.

Q. Now, will you look at the statement for December, 1911 and tell me what balance you have put in there for bills receivable?

A. There is a net balance of $567,247.54.

Q. I didn't ask you for that. I asked you for the bills receivable, read that off.

A. The bills receivable gross amount is $570,530.39.

Q. And what you have done there is to establish a reserve for losses on bills receivable?

A. That's all.

Q. There has been a reserve established?

A. Yes.

Q. And the figure you read before is the gross amount of bills receivable less reserve, is it not?

A. Yes, sir.

Q. Now then, don't you see that on your ledger you have added to bills receivable until the gross amount is $577,224.94 and yet on this statement here you have left off of the bills receivable $6,694.55, have you not?

A. That does not show on this statement, no.
Q. It does not show on Exhibit 9, does it?
A. No, sir.
Q. Now, I direct your attention to the account on page 71 of the 1911 Ledger, Reserve for Losses on Agents' Accounts. On the debit side of that account on December 30 you have made entries of $5,332.34, $3,035.02, and $14,118.56 have you not?
A. Yes, sir.
Q. What were the- made for?
A. Charges against Reserve, closing out Agent's Accounts.
Q. So that they were figuring up losses on Agents' Accounts, were they not, and charging them off?
A. Yes, sir.
Q. And that was done on December 30, 1911?
A. Yes, sir.
Q. And the total losses charged off in those three items amount to how much?
227 A. $22,485.92.
Q. Does that amount or that balance of reserve for Losses on Agent's Accounts shown on page 72 of the Ledger show anywhere in this statement for the year 1911 which is Exhibit 8?
A. That amount is not shown on this statement.
Q. No. What balance for that account do you take for entering upon this statement, Exhibit 8; what is the balance you have taken off of this account?
A. The item shown there is $22,687.09.
Q. And that is the balance before the losses were charged off on the account on page 72, is it not?
A. Before the items of December 30 were put on, yes.
Q. So that this statement for December, 1911, is not a final statement as to that account for reserve for Losses on Agent's Accounts?
A. For Losses on Agent's Accounts, No, it is not.
Q. For Losses on Agent's Accounts, it is not, it it?
A. No, sir.
Q. Nor is it final as to bills receivable.
A. No sir, it does not contain that adjustment.
Q. Now, you have said that you considered all your Agent's Debit Balances bad. So you mean to say that?
A. Yes, sir, Agent's Debit Balance are no good.
Q. Now then, on this account on the Ledger of 1911 on page 3 of the Agent's Ledger you show credits there amounting to $541,830.16.
A. Yes, sir.
Q. Are you making constantly collections on Agent's Accounts?
A. Those are not collections, no, sir, those are the postings from the Sales Journal and represent credits to Agent's Ledgers.
Q. Do they represent commissions.
A. Commissions.
Q. Yes. And those are commissions that are collected by you?
A. No, those are not commissions collected by us.

Q. Well, I didn't mean to say that. They are commissions, however, that are collected. They reduce the commissions payable to agents, do they not?

A. No, sir.

Q. What are they.

228 A. Simply commission credits to salesmen's accounts.

Q. The credits. What are the debits?

A. The charegs against the salesmen's accounts.

Q. And your balance shown here is what?

A. Would be net. balance of the Agent's Ledger.

Q. And how much?

A. $93,300 on that account.

Q. Now are not those credits on that Agent's Ledger Account commissions due to the company, retained by the company, is not that what they are?

A. No, sir. those are commissions that are credited on the Agent's Ledger and not retained by the company at all.

Q. When you credit the agent with so much commission you of course reduce his debit balance, don't you?

A. Yes, you reduce his debit balance.

Q. So that as a matter of fact it amounts to your retaining that much of the commissions due to the agent to offset his debit balance, does it not?

A. No, it does not.

Q. What do the debits on this Agents' Ledger Account on page 3 represent?

A. Represent charges against the salesmen's accounts for cash disbursements, remittance, the commissions paid on the receipt of orders.

Q. How does he pay it back?

A. He don't have to pay it back. He gets his commission credits.

Q. He gets it back by commission credits, does he not?

A. Not entirely, no. He gets 70% of the commission advanced at once.

Q. All the company gets back on its advances to agents is what it credits the agents, is it not?

A. Why, no.

Q. What else does it get?

A. The company does not get back anything.

Q. It just pays out money?

A. It only credits the Agent's Account with the commissions to which he is entitled and charges him with the commissions advanced, the cash is advanced. The difference between that account, that particular salesmen's account who have been charged with the cash advanced on an order and credited with the commission

229 belongs to him if it is a credit, and if it is not a credit, it is owing to the company.

Q. Now then, the situation is this: The company finances its agents, does it not, it advances him money?

A. Yes, sir.

Q. Expecting to get the money back out of the earnings of the agent in the way of commissions; that's the way it expects to get them back?

A. We don't expect to get the money back, no.

Q. You expect to get some of it back, don't you?

A. No, we know all the money that is advanced to him is his and more than is advanced to him.

Q. No part of the advance to him?

A. No, sir, we don't expect to get it back.

Q. Then in addition to the advances to him you credit him with the commission?

A. We charge him with the advance and credit him with the commission.

Q. Yes.

A. Yes.

Q. Now then, when he is credited with a commission on the credit side of his account that stands against the matters on the debit side of his account, does it not? You always get at his account by striking the balance, don't you?

A. Yes, sir.

Q. And then is not it true that the commissions that come in, the amount of money that comes into the company, part of which would be going to the agent as his commission is really retained by the company to offset the credits that have been given him?

A. No, sir.

Q. Now, this Agents' Ledger Account is made up by taking all the debit balances of agents to make up the Debit Account in this Agent's Ledger Account upon your Ledger of 1911, is it not?

A. This Agent's Ledger Accounts here represents all of the debits and credits that are posted in to the Agent's Ledger Accounts.

Q. Answer my question. My question was confined to the debit side of Agent's Ledger Account on page 3 of the Ledger of 1911.

(Question read as follows: "Now, this Agent's Ledger Ac-
230 count is made up by taking all the debit balance of agents to make up the Debit Account in this Agent's Ledger Account upon your Ledger of 1911, is it not?)

A. No, it is not the debit balance alone. It takes both the debit and credit balances.

Q. Referring to the debit balance alone, where do you get them from to put on this Agent's Ledger?

A. You don't put Agents' Debit Balances on that Ledger. The postings that are made into this account under Agents' Ledger are items taken from the various Journals, the debits chargeable in Agent's Ledger and the credits creditable to Agent's Ledger.

Q. What are the debits in this Agent's Ledger Account?

A. They represent commission advances on orders.

Q. What books do you get them from?

A. We get them from the Journal, C. D. There is the Cash Disbursed and the S. J. is Sales Journal.

Q. Don't you get them from the Agent's Ledger?

A. Those items?
Q. Yes.
A. No, sir, not when they are posted in this book.
Q. Do those items correspond to the Agent's Ledger?
A. In totals.
Q. Yes. What do you call it Agent's Ledger Account for?
A. Because that's what it represents.
Q. It represents the Agent's Ledger Account. Then the totals that are here on this Agent's Ledger Account will appear in the Agent's Ledger.
A. In the Agent's Ledger itemized.
Q. And they will be distributed among the accounts of the different agents?
A. Yes, sir.
Q. Now, will the totals that appear on the debit side of this Agent's Ledger Account on page 3 of the Ledger of 1911 appear as debits in the accounts of the funds in the Agent's Ledger?
A. They appear as debits in those Agent's Accounts.
Q. The credits that appear here will appear as credits to the agents in the different accounts, in the agent's Ledger?
231 A. Yes, sir.
Q. Now, on the Agent's Accounts the matters that are debited to him are moneys advanced?
A. Moneys advanced and commissions charged back and anything that might be a charge to his account.
Q. Moneys advanced, commissions charged back and any part of the commission paid by the company?
A. How do you mean, part of the commission paid by the company?
Q. You paid him $21 in cash?
A. We state that in the first item, Cash Advanced.
Q. That will be a part of the debit?
A. That's charged to his account.
Q. Now, the credit items will be every credit allowed the agent upon his commission?
A. Every credit for commission on sales.
Q. Exactly. Therefore the credits allowed the agents, the money paid to him or advanced to him are charged back to him?
A. No, not charged back to him.
The Master: Or charged back to him.
A. Oh, the commissions are charged back to him if the accounts are charged back.
(Question read as follows: "Exactly. Therefore the credits allowed the agent, the moneys paid to him or advanced to him are charged back to him?)
A. In other words, you want to say that the commissions credited to him should offset the charges made to his account, is that the idea?
Q. Answer the question.

Mr. Meads: If you don't understand the question you can say so.

A. I don't understand the question.

(Question repeated.)

A. I can't answer that question, I can't understand it.
The Master: These credits you have just spoken of pay——
A. Offset. I don't think the word "pay" is the right word to use.

The Master: Change the word to "offset."
Mr. Zane: Put it "reimburse" that will do.
Mr. Meads: "Reimburse" will not do.

232 The Master: He says "offset" use that word. Is that clear to you?

A. That the commission credits should offset the agent's charges for commission advances.
The Master: Yes. And your answer to that is yes?
A. Yes.

Mr. Zane: Now, we desire to offer in evidence from page 2 of the Ledger of 1911 the Bills Receivable Account.

(Said Bills Receivable account appearing on page 2 of the Ledger of 1911 in the words and figures following:)

Bills Receivable.

1911.

Jan.	1.	Balance from ledger #7.....		586,317.10
	31.	.....	S. J.	72,012.68
Feb.	28.	.....	"	108,001.46
Mch.	31.	.....	"	84,481.50
Apr.	29.	.....	"	97,409.52
May	31.	.....	"	89,066.50
June	30.	.....	"	104,541.10
July	31.	.....	"	77,199.93
Aug.	31.	.....	"	78,939.25
Sept.	30.	.....	"	121,734.97
Oct.	31.	.....	"	94,809.82
Nov.	29.	.....	"	100,297.37
Dec.	30.	.....	"	96,695.96
				1,711,507.16
Dec.	30.	Balance		570,530.39
	30.	Adj. of Customers Acct. J.....		6,694.55
				577,224.94

1911.

Jan.	31.	S. J.	81,849.37
Feb.	28.	"	115,283.11
Mch.	31.	S. J.	97,413.66
Apr.	29.	"	91,846.88
May	31.	"	97,832.41
June	30.	"	89,867.84
July	31.	"	88,605.26
Aug.	31.	"	86,727.29
Sept.	30.	"	121,089.10
Oct.	31.	"	96,938.38
Nov.	29.	"	87,446.57
Dec.	30.	"	96,076.90
	Balance to Ledger.....		570,530.39
			1,711,507.16
	Balance to Ledger #9.....		577,224.94
			577,224.94

233 The Master: Does the agent lose all his commissions if the sale fails to go through finally or does he have a certain per cent anyway.

A. If he is charged back commissions on a sale, it is on the unpaid balance.

The Master: If a part of it is paid?

A. If the sale is $100 and $30 is paid on the account and his commission would be 30% of the whole, he would be credited with $30.

The Master: Yes.

A. Now, if that account is charged back with the $70; there has been $30. Now, on that same account he would have been advanced the commission of $21 which is charged to him. Now, before the account is charged back he has a credit balance of $9 for the full amount of the commission and the amount paid to him because his commission credit was $30 and his advances was $21 and the difference is $9 or his credit.

Now, the account is charged back with $70.00 against $30.00. Now, his commission will be charged back on $70.00 which is $21.00. Now, the credit to that account showed the net amount of $9.00. Now, he has re-received the $21.00 and he has also been charged with $21.00 so there is $12 he is charged with. His credit is brought down from $9, which was the net amount, to the difference between the two, or $12. Now, he owes the company $12 because he was only entitled to $9 commission when he got $21.00 in cash.

The Master: Then all that amounts to is that he only finally is entitled to have commission on the amount that is actually collected on the order?

A. On the amount that is actually paid or collected.

The Master: Now, where does he get his commission in the first instance, does he get it from the customer or from the company?

A. He gets it from the company.

The Master: There is a cash payment made on every sale, is there not?

A. Yes, sir.

Q. Where does that go?

A. That goes to the company.

The Master: He does not handle that at all?

A. No, he sends that in with the order.

234 The Master: So his commission *are* not mixed up at all with the customer's cash payment?

A. No, sir, the cash comes in with the order and it is credited to the customer's account. A credit to the customer is made at the time and the advance is advanced after the order has been accepted on a basis of 70% of the amount of commission to which he is entitled.

Mr. Zane:

Q. Now, let me see your bookkeeping operation. A sale has been made and the agent is entitled to a $30.00 commission. You give him a credit of $30.00.

A. $30.00.

Q. Suppose you pay him $21, what do you do?

A. We charge him with $21.00.

Q. The difference of $9 where do you put that?

A. That's in his account, he has got it now, $30.

Q. He has a credit to start out with of $30?

A. He has a credit of $9 if that account is paid. Say he quits today and that account is paid up today, he would be entitled to the $9 and he would get it.

Q. Now, suppose on that scale $30 is paid.

A. By the customer.

Q. By the customer, and then he fails to pay any more, what is the entry made in this book?

A. $30.00 is paid. That would mean the agent is entitled to only a credit of $9.00.

Q. Yes, What entry do you make on the books?

A. He is credited with $30 so he should be charged back with $21, consequently he will be charged with $21.00

Q. Yes. Then the balance owing from the agent is $12.00.

A. $12.00.

Q. And what he gets on that sale is $9?

A. He gets a credit of $9.00. He has had a credit of $9.

Q. But has he gotten it?

A. He has.

Mr. Meads: $9 and $12 more?

A. He has gotten cash of $21 besides.

Mr. Zane:

Q. Now we will assume another cas-. The agent has sold a scale upon which his commission is $30. You credit him with that $30.

A. Yes, sir.

235 Q. You pay him $21 and debit him with that on his account?

A. Yes, sir.

Q. Now, supposing the customer completes the payment on this scale, what do you do with the account?

A. It remains as a credit to his account until his account is finally disposed of at which time he gets the $9.00.

Q. When the sale of the scale is completed do you make any entry upon his account of any kind.

A. No, sir.

The Master: You mean when the first payment is made?

A. There is no entry made, no sir.

Mr. Zane:

Q. You are still left owing him $9?

A. Yes, sir.

Q. And you pay it to him in some transaction?

A. We pay it to him in cash if there are no other debits, if his account would end up with no other debits and he quit, he would get $9 in cash.

Q. But if he ended up in debt to the company here, he would not get the $9.00?

A. No, he would not be entitled to it.

The Master: If his debt to the company is as large as $9?

A. He would not be entitled to it.

The Master: It is an ordinary account?

A. That's all.

The Master: Do these agents get a salary in addition to their commission or is it wholly a commission?

A. Wholly a commission.

The Master: Do the same agents remain with you year after year or do they change?

A. In a great many cases we have agents who have been with us for a good many years, but of course there are a lot of changes made. That, of course, is one reason why there are debit balances because of agents changing. They have no opportunity if they don't remain in the service long enough to establish a good credit.

The Master: Do you allow their debits to get pretty large?

A. No, we do not, but sometimes you know you advance a man——

236 We will say, for instance, that conditions as they were in the South during this last year, we had some salesmen who were with us for a number of years. They sent in their orders and you give them the commission credits, the orders have been accepted in good faith and they have had a credit on the books. Now, the commissions have been advanced to him on those particular orders, but due to conditions over which he nor us have any control we have to take some of those scales. Now then, he has to be charged back with the commissions on the unpaid balances. They, together with the commissions which have already been advanced him will soon

amount to considerable. It does not take long in commissions amounting to $30, $35, or $50; if you have two items of $50, you charge them back and you have $100 quickly.

The Master: When do you finally make up your mind that an agent's account is not any good and charge it off; when he quits your service?

A. Well, if he has a debit balance when he quits the service, you might just as well say it is absolutely a loss.

The Master: Yes, but some of these men are good, are they not?

A. Our experience has been just to the contrary.

The Master: That you don't collect very much?

A. We don't collect expenses. Salesmen are not the same as men working on salaries. As a general proposition, if they have a good week's trade or month's trade and get good commissions, advances, they live high that week or month, and there is no chance to get any of it back, very, very seldom.

Mr. Zane:

Q. That is, when he quits working for you owing you money?

A. Yes.

Q. But as long as he is working for you there is a chance of getting it back?

A. There is a chance of him reducing his debit balance, yes, if he is successful in making commissions enough to offset the debit.

The Master: Well, you keep pretty good track of him, you are not going to advance him any more commissions than you have to? If he has a large debit balance, you work the amount down all you can?

237 A. We certainly do, we don't aim to throw money into the account.

The Master: But of course the man has to live.

A. The man has to live.

The Master: And you have to advance him although he has a debit balance?

A. Yes, sir.

The Account, offered in evidence by plaintiff, Reserve for Losses on Agents' Accounts, is shown on pages 71 and 72 of the Ledger for 1911 as follows:

Reserve for Losses on Agents' Accounts.

Dr.

1911.

Jan.	30.	.....	4	934.51
Feb.	14.	.....	1	.62
	20.	.....	1	1.00
	20.	.....	1	102.35
	28.	.....	1	140.52
	16.	.....	2	35.50

	10.		4	223.21
	28.		1	26.90
	28.		1	216.86
Mar.	17.	Geo. B. Mann	CD	130.71
	15.	F. M. Pierson	1	35.35
	23.	J. K. Meyers	1	63.00
	23.	J. B. Ridley & W. J. Borse (Custs)	1	22.20
	31.		2	505.12
			2	94.21
			2	537.33
	18.		3	32.57
			3	262.85
			3	362.73
			3	236.17
	27.		3	150.41
Apr.	14.	E. C. Curry	2	148.21
	14.	E. L. Riley	2	1.00
	17.	H. N. Brindley	3	124.32
May	27.	C. H. Cohrs	1	182.25
	10.	G. H. Beckford	3	263.36
	10.	F. B. Reade	3	79.65
	17.	O. O. Gillworth	3	72.50
June	30.	S. J. Beckwith	J	149.50
July	11.	Hagerman	1	1.00
	24.		2	34.54
	24.		2	141.75
Aug.	29.	S. J. Lewis	2	.25
Sept.	15.	C. F. Vurgutz	1	23.75
	18.	L. J. White	1	16.57
	15.	C. C. Nott	2	50.00
	27.	J. J. Derbes	2	.50
	27.	E. Du Buc	2	513.45
	30.		2	159.75
Oct.	26.	B. M. Boland	2	339.75
	11.	T. J. Hord	3	80.18

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Cr.

1911.

Jan.	1.	Bal. from ledger #7		42021.11
	25.	4		11.25
	31.	To reserve for loss B Rec	GJ	4,000.00
Feb.	13.	C. C. Nott Shtg	J	50.00
	28.		1	362.55
Mar.	4.	W. E. Mireault	1	2.00
Apr.	19.	K. D. Umath	J	3.75
	17.	W. E. Mireault	1	2.00
June	3.	W. E. Mireault	1	2.00
Aug.	18.		1	2.00
	18.		1	30.00

	17.	D. H. Wishart	3	175.56
Sept.	28.	From Undivided Profits	J	25,867.34
Nov.	28.	S. M. Harrington	1	.40
	28.	G. G. Buck a/c reinstated	2	934.51
Dec.	30.	W. E. Mireault	1	2.00

Dr.

	29.	J. I. East	3	2,317.37
Nov.	29.	C. H. Walters	J	260.00
	29.	C. M. Cary	1	119.13
	29.	F. A. Woodrich	1	15.50
	29.	C. R. Bair	1	50.00
	29.	Geo. E. Fay	1	11.51
	29.	C. H. Walters	1	303.10
	29.	H. Rhinehart	1	713.25
	29.	Geo. Hawkswirth	1	717.36
	29.	F. P. Baskin	2	54.57
	7.	J. I. East	3	.78
	22.	C. Bredberg	3	66.99
	22.	G. E. Courger	3	27.65
	22.	W. H. Sheets	3	174.35
Dec.	21.	F. E. Knisely	J	4.00

Reserve for Losses on Agents' Accts.

Dr.

Dec.	14	G. F. La Croix	1	253.02
	30.	A. S. Cohen	1	35.50
	9.		2	12.52
	9.	D. C. Rothert	2	6.50
	9.		2	78.00
	18.		2	51.05
	19.		2	81.92
	19.		2	18.40
	22.	B. M. Boland	2	3.50
	30.	H. G. Clark	2	7.00
	7.	M. S. Potect	3	28.90
	7.	J. C. Riley	3	286.98
	7.	J. K. Robinson	3	10.50
	11.	R. L. Jarvis	3	320.95
	13.	C. C. Flesher	3	30.25
	13.	E. Matthews	3	83.37
	15.	P. A. Gillen	3	105.25
	15.	G. W. Jewett	3	82.34
	22.	C. E. Hartman	3	68.05
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	29.	W. H. Horton	3	25.25
	29.	H. B. Orr	3	38.97
	30.		1	5,332.34

Cr.

Dec.	30.		2	9.23

Dr.

Dec.	30.	.....	2	3,035.02
	30.	.....	3	14,118.56
		Balance to Ledger #9.....		210.40
				35,656.70
				35,656.70

Cr.
Cr.

The Account, Undivided Profits, is shown on pages 73 and 74 of the Ledger for 1911 as follows:

Undivided Profit a/c.

Dr.

1911.

Jan.	31.	Jan. Pref. Stk. Div.....	GJ	1,845.75
	31.	Jan. Acct. & Note Rec. Adj.....	GJ	101.10
Feb.	14.	.....	1	50.00
	14.	.....	1	5.00
	28.	Feb. Dividend Pref. Stk.....	J	1,845.70
	28.	.....	1	35.00
	28.	.....	1	60.00
	28.	.....	1	66.50
	28.	.....	2	75.00
	28.	.....	3	100.00
	28.	.....	3	10.00
	28.	.....	4	11.00
Mar.	30.	Mar. Dividends	J	1,780.44
	24.	.....	1	10.00
	31.	.....	2	28.00
	31.	.....	2	5.50
	31.	.....	2	5.00
	31.	.....	2	45.00
	31.	.....	2	7.50
	31.	.....	2	16.00
	22.	.....	3	10.00
	27.	.....	3	10.00
Apr.	29.	Apr. Dividend	J	1,832.78
	29.	S. A. Rowland.....	2	2.00

Cr.

1911.

Jan.	31.	Fr. Surplus	GJ	44,858.61
Feb.	16.	Frisco Exp. fund.....	j	7.59
Nov.	28.	Exch. Comp. Scales.....	J	25,867.34

240 *Undivided Profit a/c.*
Dr.

Apr.	29.	W. J. Perkin	2	5.00
	29.	Paul Dunklan	2	10.00
May	31.	May Dividends	J	1,838.05
	31.		2	35.00
	31.		2	8.00
	16.	Chas. Turner	3	8.00
	18.	H. W. Wayland	3	36.00
	18.	Handley & Dawe	3	60.00
	19.		3c	6.00
	31.	Accumulated Div. F. M. Rakestraw	J	197.50
June	13.		3	35.00
	14.	Custs Accts St. Louis Chgd. Off	3	139.50
	30.	June Dividends	J	1,833.46
	29.	Excise taxes 1910	CD	930.07
July	29.		1	10.00
	20.	Avila & Bumental	3	8.00
	20.	D. B. Frizzle	3c	10.00
	31.	July Pref. Stk. Div	J	1,836.66
Aug.	31.	F. J. Kresher	2	10.00
	31	C. B. Chappell	2	6.50
	22.	J. Sherell	3	5.00
	31.	Aug. Pref. Stk. Div	J	1,837.32
Sept.	30.	Sept. Pref. Stk. Div	J	1,839.73
	18.	Hugo Peterson	1	6.50

Undivided Profit a/c.

Sept.	18.	Wm. Mayer	1	1.80
	18.	Wm. Schoenbaum	1	15.00
	18.	Geo. Scholl	1	10.00
Oct.	31.	Oct. Pref Stk. Div	J	1,840.39
	31.	Geo. Wittman	2	95.00
Nov.	23.	Res. for losses Agts. a/cs	J	25,867.34
	15.	E. Britz	1	7.50
	29.	Nov. Dividends	J	1,840.83
Dec.	30.	Dec. Dividends	J	1,841.59
			3	202.50
	19.	Customers' Accts. Adjustment	J	3,828.06
		Balance to Ledger #9		16,514.97
				70,733.54

In the Account Reserve for Losses on Agents' Accounts there is an item of $14,118.56 which covers Agents' Accounts written off on December 31, 1911. There is included in this amount the debit Balance of Agent, H. A. Reed, totaling $8,356.07.

(Witness produces Agents' Ledger containing this account.)

Reference to Mr. Reed's account shows that this account begins February, 1908, and closes December 30, 1911. The total
241 amount of Debit entries on this Reed Account amounts to $46,074.12. By striking a balance between Debits and Credits at different periods, we find that on March 31, 1908, Mr. Reed has a Debit Balance of $447.40; on April 30 a Debit Balance of $905.85; on July 24, 1908, $1,673.80, and on September 30, 1908, a debit of $1,754.35. Then on March 31, 1909, he has a Credit of $193.08—that means that he has cleaned up all those Debit Balances and has brought about a credit Balance of $193 in his favor. Then on April 30, 1909 he has a Credit of $16.91 and on May 31, 1909, a Debit of $781.98. On the last of December, 1909, he has a Debit of $5,082.95 and at the end of 1910 a Debit Balance of $8,230.57, at the end of 1911 this Debit Balance had reached $8,356.07, which was the amount owing when we wrote the account off. We have gotten judgments to cover these Balances, but we have been unable to collect any of them. I don't know what the losses on agents' accounts would be for a whole year. The amount of $11,354.80 on page 25 of my account is taken off the books and pro rated. It would not be fair to add one-fifth to it for the whole year. That would not give the whole year.

"The Losses on Agents' Accounts applicable to the cylinder scales listed as sold in the Account during the 1911 period average about 4.14 per cent. This being for ten months of the year we could find the percentage applicable to the cylinder scales for the entire year by adding another 1/5 to this.

Recross-examination.

By Mr. Meads:

"I testified yesterday to a figure, $3,203.04, for losses on Customers' Accounts for the 1912 period. I wish to correct that amount —it should be $1,503.43. This account, 'Losses on Customers' Accounts,' would have no entries for losses that we might have suffered in deterioration of the scales, nor would we enter in this account any amount paid to a lawyer or investigator in appempting to locate the lost scale. This account is concerned only with absolutely lost scales, not any expenses in connection with collections.

"We take a retention of title contract on these scales as a general rule, though it might be possible that in some case we do not, when the man is sufficiently rated.
242 His mercantile rating, and the size of the cash payment, and so forth, as well as the length of time the account has to run governs very largely whether we deem it advisable to record the order.

"The proportion of our sales sold upon a time or installment basis is probably 80%. Ordinariiy a scale which is sold for $150, the cash payment would be $15, and the balance of the payments on such scale represented by notes of $13.50 per month. These notes do

not draw interest. The company advances to the agent selling the scale 70% of his commission, which in most instances amounts to several times the amount of initial cash payment collected and turned over to the company.

"In the income tax schedule for the years 1910, 1911, 1912 and 1913, the tax was paid upon the book value. No deduction was made in such valuation for the items which I have mentioned as Losses on Agents' Accounts, except in so far as the accounts were written off during the year. The tax was paid on the income as shown by the books and where the books show no accounts written off, there was nothing written off in such tax statements.

"In discussing the Increase in Agents' Debit Balances, I made a slight error in figures. The amount of Increase in Agents' Debit Balances which accrued during the year 1911 totalled $46,004.68 and during the 1912 period totalled $13,600.95. These were increases during the respective periods. I was examined yesterday by Mr. Zane about the account of H. A. Reed. This account covered disbursements for operating the office in Los Angeles. This account was practically the same as a branch office account, except that it was carried in the name of H. A. Reed.

Re-redirect examination.

By Mr. Zane:

"Mr. Reed would send in his expense statements for this branch office in Los Angeles, for light, heat, rent, etc., and the amounts expended were reimbursed to him and charged to his account, consequently he owed us for it.

"In the income tax return for the year 1909, the figures used for net income were $154,716.20; the return of net income for the year 1910 was $93,006.63; for the year 1911 the return of net income was $28,276.25, and for the year 1912 the return of net in-
243 come was $113,912.10. The exemption in each case was $5,000, so in order to get the actual income returned you should add $5,000 to each of these items. These tax returns cover the figures just as they are on the books and includes income from Canadian business, foreign sales, and everything shown on the books. The gross income for the year 1909 was $918,898.10; for the year 1910, $961,056.30; for the year 1911, $890,465.97, and for the year 1912, $992,544.34. These statements which I have before me are merely copies of the return, but in each case the return was sworn to."

(The income tax statements for the years 1909, 1910, 1911 and 1912 were then offered in evidence and marked Plaintiff's Exhibits 33, 34, 35, and 36.)

DANIEL H. KELLY, a witness called by the plaintiff testified as follows:

"I am the secretary of the Toledo Scale Company and assistant to the President. I have held these positions only about four

months. For the period of five years prior to the last four months I was Sales Manager of the company. As Sales Manager, I had the superintending of the sales of all kinds of scales. Before my appointment as Sales Manager I was employed in the Sales Department, handling the general correspondence and with general duties involved in the department. The Sales Manager who preceded me was F. L. Ditzler, who now is in charge of our western District, with offices at San Francisco. His district comprises approximately ten states.

"As Sales Manager I was informed from day to day what scales were sold; that is what scales of general kinds. I could not say specifically how many scales of each kind had been sold during any one year, though I was informed in a general way. The information obtained as to the number of scales sold from day to day was obtained when the orders came in. The only way I had of finding the number of scales sold and what they were, was by jotting down this daily information on a memorandum pad. This was not a permanent record, but the pad was kept for about two
244 or three months as a memorandum and was then destroyed.

The only means I had of finding the number of scales sold and what they were, was from the Customers' Ledgers. That is the loose leaf system. If, for example, I wanted to find out how many fan scales were sold in the year 1910, I would probably have difficulty finding the number specifically. I would probably have to examine the Customers' Accounts which show all the cylinders and all the fans sold during during the year. The same would be true if I desired to locate the number of any particular kind of scales sold in the year 1911 or 1912. I don't know of any one book containing the total of scales sold either for the month or for the year, as distinct or separate items. There might be such a record in some department, but personally I kept no such record, and know of none such. From the Sales Department's standpoint, I was interested in the total number of scales sold and not the different kinds, or rather it was the amount of sales that I was interested in. We did not handle it by trying to ascertain the different kinds of scales sold. We handled it as total sales and total profit.

Q. Where did you find out where you were making your money, on cylinder scales or fan scales?

A. Well, I was sales manager.

Q. You did not investigate that?

A. I did not. That was the other department, the profit and losses, and so forth.

"As Sales Manager I was not investigating the efficiency of the different departments or different costs of selling different kinds of scales. We urged our salesmen to sell the largest volume of business they could. The mere fact that one man might have sold more fans than cylinders than another man we took it for granted depended on the conditions of his territory. I can answer specifically for my own department only, and I can say that we had no such record containing in detail the total number of scales sold either

by the month or by the year. My appointment as Secretary and assistant to the President dates from so recent a period that I have not had an opportunity to assume the full duties, nor to investigate the various departments to the extent that my duties entail. While a number of statements of various kinds have been presented to me, I don't know that any one of them would show the exact
245 information Mr. Zane asks for. I have seen the various statements presented by the Treasurer's Department which statements I believe show the total sales and total profits, but I don't think they show the difference between cylinder and fan scales sold, or any particular kind of scales. I would have to go — the Treasurer's Department—Mr. Zolg's Department—for official information as to records of the nature asked for. Mr. Zolg would know whether there is such a record.

GEORGE H. MOULD, a witness called by plaintiff, testified as follows:

Direct examination.

By Mr. Zane:

"I have been employed by the Toledo Scale Company for ten years as foreman of the Assembling Department, and the Pattern Department. When the Different parts of scales are manufactured they are brought to my department to be assembled, and that system has been in vogue as long as I have been in the employ of the company. I know the different styles of scales. The first style of cylinder scales that was made here was No. 300. The next one was No. 344; the next one 281; then the 383, the electric scale. These scales were numbered according to the chart; 344, 345, 6, 7, 8, and 9, and 350 represented slight differences in the charts; the construction was otherwise the same. I don't believe we built a 351. I think 350 was the last of this series.

Then came the 381, 2, 3, 4, 5, 6, and 387, and the differences in charts and differences in heights, whether designed for a high or low counter, also differences as between electric scales and nonelectrics, and finally in the size of the cylinder used. The last numbers, 385, 386, and 387 were scales with small cylinders, the 387 being the small cylinder, electrically illuminated. The No. 383s and 384s were electric scales and cost a little more to make. All the scales of the 380s were of the same general type. We used to make the style 81 series, including 81, 82, 83, 84, 85 and 86. I don't remember 87. Then we intorduce- the 181 series of scales. Then, later came the 581 series, 581, 582, 583-587. The 581 and 587 were electrics,
246 but the 587 contains a smaller cylinder than the 581. They were otherwise all the same type of scale. We have not changed the style of scale except trimmings & appearance. I do not know of any special cylinder, No. 30. We made special cylinders, some people wanted different kinds of platters and some people wanted a magnifying glass, and other special little features. We never changed the style numbers of the scale for such features, how-

ever. We had a number 30 scales but it was not a cylinder scale. It was a fan scale and we made a lot of them. These scales sold ordinarily for about $85, but with extra finishes they sometimes charged $25 extra.

"The scale before me, marked Complainant's Exhibit Defendant's Scale, bears the serial number, 46,741. That scale was made several years ago, I should think about nine years ago. I have noticed the construction of the cylinder. We have about the same construction now. The cylinders, so far as the spiders are concerned looks like they were made of steel. I don't think we used anything but steel nine years ago, but I could not tell whether it is steel or aluminum. It does not make any difference to me. I do not know whether they continued to make steel spiders after they began the making of aluminum spiders, I would not know the difference. When it came to my department the cylinder was sprayed over and I could not tell what material they were made of.

"The process of assembling a cylinder scale consists in first getting together all the parts belong to that scale. We have divided the assembling into five or six different jobs, so as to specialize because of the particular work. We have what is called the first assembly, assembling the base and base horns—that is the part where the lever fits. Then another man assembles casings, that is, puts in the chart, roller bearings and everything pertaining to the chart. Then there is what is called the second assembly. This fellow puts the chart and the casing onto the housing. The housing is that part of the scale between the cylinder and the base, which contains the pendulum. The scale then goes to the balancer, where it is balanced and he makes all adjustments so that the scale weighs correctly. Then it goes to the polisher, who puts all the glass in, all the scrolls on, etc. Then, if it is an electric scale, before the scrolls are put on, the wiring is connected up—the wiring and switching, etc.
247 Then comes the first inspection. By that time the scale is complete. The balancer gives the scale its serial number. This number is put on the plate with a die. He never gives the scale a number until it is balanced, because something might happen that we could not use the scale. The scales are numbered just as they come through. That is, one number might be for a fan scale and the next number given to a cylinder scale, and the next number to some other kind of a scale. We of course assemble several scales at the same time. We lay out the work and make daily output for a bunch of scales, but that bunch of scales will include both cylinders and fans, mixed up according to the way the orders come in. The serial numbers given to the scales are registered in what is known as the Balancer's Book.

We keep the book on a desk in my room and every man, when he balances a scale has to go and take a number from that book. The book is consecutively numbered. I did not keep these balancing books for a considerable period back, usually I kept them about a year, and then discard them. The scales are assembled a bunch at a time. That balancing book is not the shipping book."

(Witness here produces one of the Balancing Books, showing that the last scale made was No. 154649, the book being marked "Assembling Room Record.")

"All of the books used were similar to this one, and consecutively numbered in the same fashion. Then entries show the serial number of the scale as well as the style number of the scale, then the color, then the chart, and finally the name of the balancer and the date of balance. I keep these books around for a year or two after they are filled and then they are thrown into the junk."

(Witness is asked to produce these books and produces them. They show the scales assembled, from May 12, 1914, back to Oct. 22, 1912.)

"I have not preserved any before that. If a purchaser of a scale desires a spare part for it, he secures the particular part desired from the stock room. I have nothing to do with that part of the business. Our department does not attend to the replacing of parts. When the scale leaves the assembling room it goes to the shipping room. I notice in this book a space reserved for #800 scales. These numbers were reserved for the portable scales—heavy capacity
248 scales—which are built in another building, and to save the trouble of coming up here every few minutes we reserve them these numbers. Scales going to England or Norway, are identified in the balance book for proper charts. The designation of the charts in the United States is by letter; thus, we have an A chart, a B chart, an A. M. chart, etc. We are not interested in keeping track of how many scales are assembled keeping part of the business.

WILLIAM SLATER, called on behalf of plaintiff, testified as follows:

Direct examination.

By Mr. Zane:

"I reside in Chicago and am an expert accountant, connected with the firm of Marwick, Mitchell, Peat & Co., who have places of business in New York, Chicago, Boston, Denver, Milwaukee, Pittsburgh, New Orleans, St. Louis, Philadelphia, Kansas City, San Francisco, Portland, Salt Lake City, as well as in Canada, Paris, London and Glassgow. I have been an accountant for fourteen years and have been conducting investigations relating to costs, etc., of commercial houses. I have had personal experience in London, Manchester and Newcastle, England, and Chicago, in the United States.

"I began an investigation of the books of the Toledo Scale Company about March 9th, 1915, and continued it first at Toledo and afterwards in Chicago until about the middle of December, 1915. I continued in Toledo from March 9, 1915, to the end of October. When I arrived at Toledo, the first gentleman I saw was Mr. Kelly. I was introduced by him to Mr. Zolg and informed that Mr. Zolg would produce all documents, information and books desired. I asked for the records pertaining to sales and was told that they were

contained in the Customer's Accounts. I was given the Customers' Accounts which are in the form of invoices, showing the number of scales sold, factory number and gross sales price. They are loose sheets bound together into a book form, and maintained in alphabetical—not chronological—order. On the face of each sheet was entered the date of the order for the scale, the name of the purchaser and the place, the agent who sold the scale, the
249 order number, the shipping directions, and the date the scale was shipped. The date of payments were entered below under the head of "Note Record." There was also entered the number of scales sold, the style number and a general description of the scale, as, for example, blue, gold, second hand, rebuilt, etc. There was also entered the initials of the agents and amount of commission." Then, under the head of "Factory Number," the serial number of the scale was given. If anything was taken in exchange it was shown in some cases as a deduction from the gross amount of sale in the column of sale in the column marked, "Special by Exchange Scales," so that this sheet, generally speaking contained a full record of the sale. "Under the note record was entered dates due and dates paid." These sheets were bound together and contained in what is called the Customer's Accounts, or Customer's Ledger. I also had access to, and examined the Sales Journals, which show the sales accounts, wherein all sales were posted in gross amounts for particular sales, and whereby we could check the Customer's Accounts. I also had access to the General Journals which contain the miscellaneous transactions, and the Purchase Journals which contain the purchases. These journals were in sections and bound in loose leaf form in one general book. I also had access to the General Ledger—I didn't use cash books—there was a general ledger for each year, closed off December 31st. For cash payments I went to the ledger." I believe that in the years either 1910, 1911 or 1912, there was a separate ledger entitled, 'Canadian.' I also had access to the Trial Balance Books for the whole business."

(The witness here opened a portfolio and took therefrom a bound volume of memoranda and added:

"There was also produced in 1912 two ledgers, a private ledger and an expense ledger. These practically exhaust the books.

"In addition to the above mentioned books I had access to the voucher records, that is, the vouchers themselves, whenever I called for them—some of them were missing, however.

"In doing this work I had several assistants—four at one part, and three for the remaining portion of the investigation. We had the work checked from one assistant to the other, they interchanged work." We then balanced the work with the journal and
250 check, for instance, the scale sales on the Customers' Accounts as against the results in the ledger. The accounts have been balanced with the monthly totals in the Sales Journal, which monthly totals are posted in the ledger accounts, and our summaries of sales balanced in gross with the United States sales account in the General Ledgers for the year. "Each month was balanced with the sales

journal monthly, that is, agreed each year with the ledger account total and the sales journal totals."

"I secured the gross sales for each year, beginning with 1906, and the number of scales sold."

Then testimony as follows:

Q. All right. We will take cylinder scales first. Now give me the gross sales of cylinder scales for the year 1906 and the amount.

Mr. Meads: That, your honor, I object to at the present time without some proof that the cylinder scales contained the infringing device.

The Master: Objection overruled.

A. The year ending December 31st, 1906, 57 scales, amount $5,760.

Q. Now, have you there the details showing what the style number of these sales were?

A. Yes, sir.

Q. Give us that, if you please.

A. 300.

Q. They were all 300's?

A. All 300's.

"For the year ending December 31st, 1907, the number of cylinder scales sold was 1,221; the gross amount of sales $154,758. These included scales of 300, 345 and 344, and 346 types. Styles 300, 123, scales style 344, 832 scales, style 345, 173 scales; style 346, 93 scales sold."

"For the year ending December 31st, 1908, the number of scales sold was 3,232; the amount of sales was $459,005.50, and included scales of the 300 type, 3 scales sold; style 344 type, 49 scales sold; 345 type, 1,591 scales sold, 346 type, 1,197 scales sold; 347 type, 323 scales sold; 348 type, 55 scales sold; 349 type, 7 scales sold; 350 type, 3 scales sold; and special cylinder 30 type, 4 scales sold. As to the special cylinder 30 type, that sale appears August 31, 1908 in the sales Journal as 4 scales 30-B, gross sale $500, at a price of $125 each. That special transaction was investi-
251 gated, and Mr. Zolg was asked if it was a cylinder scale, and he stated that they were cylinder scales. There were no fan scales at that time selling for any such price as $125. The price of fan scales hanging about that period was about $85 per scale, and the $125 was the price of cylinder scales."

"For the year ending December 31st, 1909, the total number of cylinder scales was 4,227, and amount of scale sales, $599,455.57. These scales were the 81 type, 38 scales sold; 82 type, 185 scales sold, 83 type, 38 scales sold; 84 type, 6 scales sold; 85 type, 6 scales sold; 86 type, 3 scales sold; 181 type, 16 scales sold; 182 type, 58 scales sold, 183 type, 16 scales sold; 186 type, 1 scales sold; 344 type, 5 scales sold, 345 type, 1,232 scales sold; 346 type, 1,971 scales sold; 347 type, 461 scales sold; 348 type, 85 scales sold; 349 type, 10 scales sold; 350 type, 13 scales sold," together with 83 scales we were unable

to classify. The reason for these unclassified scales was that in October 1909 the system of bookkeeping was altered by issuing vouchers records, supported by numbers for the entries in the Sales Journal. The particular vouchers for these 83 scales were missing. The vouchers for these scales were duplicates of the Customer's Accounts. About 50 were missing. "In the case of the others, the original referred to the sales journals by a stamp number, and in several cases these numbers were torn off or rubbed off by constant use, and it would entail a matter of going through about 50 books to try and trace the items. Probably you might spend three months and then even not balance the items." We identified these 83 scales as cylinders by taking all items on the Sales Journal, the gross sales for which the price per scale amounted to $140 and over, as there was no fan scale selling for a price as great as $140. If there were any cylinder scales selling at a price lower than $140 we have taken no account of them.

"For the year ending December 31st, 1910, the total number of scales sold was 5,356; the gross amount was $773,687.11, and were 81 type, 95 scales sold; 82 type, 200 scales sold; 83 type 44 scales sold; 84 type, 7 scales sold; 85 type, 8 scales sold; 86 type, 2 scales sold; 181 type, 51 scales sold; 182 type, 104 scales sold; 183 type, 33 scales sold, 184 type, 1 scale sold; 300 type, 2 scales sold; 344 type, 2 scales sold; 345 type, 822 scales sold; 346 type, 1,734
252 scales sold; 347 type, 631 scales sold; 348 type, 116 scales sold; 349 type, 2 scales sold; 350 type, 8 scales sold; 351 type, 1 scale sold; 353 type, 260 scales sold; 354 type, 2 scales sold; 381 type, 651 scales sold; 382 type, 270 scales sold; 383 type, 175 scales sold; 384 type, 69 scales sold; 385 type, 45 scales sold; 386 type, 3 scales sold; 387 type, 6 scales sold;"

"For the year ending December 31st, 1911, the total number of scales sold was 5,130, and the total gross amount of these scales, $790,527.26. These scales were 81 type, 35 scales sold; 82 type, 65 scales sold; 83 type, 13 scales sold; 84 type, 4 scales sold; 85 type, 6 scales sold; 87 type, 1 scales sold; 181 type, 27 scales sold; 182 type, 85 scales sold; 183 type, 30 scales sold; 185 type, 4 scales sold; 186 type, 2 scales sold; 300 type, 3 scales sold; 344 type, 2 scales sold; 345 type, 434 scales sold; 346 type, 543 scales sold; 347 type, 210 scales sold; 348 type, 28 scales sold; 349 type, 9 scales sold; 350 type, 4 scales sold; 351 type, 1 scale sold; 353 type, 35 scales sold; 381 type, 1,149 scales sold; 382 type, 325 scales sold; 383 type, 1,181 scales sold; 384 type, 287 scales sold; 385 type, 95 scales sold; 386 type, 6 scales sold; 387 type, 38 scales sold, 581 type, 418 scales sold; 583 type, 52 scales sold; 585 type, 35 scales sold; 587 type, 3 scales sold."

"I have the figures for the entire year 1912, and also the figures up to and including August 31st, 1912. The total number of scales sold to August 31st, 1912 is 3,118, and the amount $506,430.36, these scales were 81 type, 38 scales sold; 82 type, 28 scales; 83 type, 4 scales sold; 87 type in red, 1 scale. That wipes out the scale of the previous year, a replacement. It is a cancelled sale. I have taken it off the total sales. It is probably a replacement. From

memory, it is probably a case of a scale sold, say, for $140, replaced by another style for $185. I don't count it in my total, because I included the scale returned. I throw it out of my total. The total shows 3,119 scales, and I take the one scale off, leaving 3,118. It is not in the 3,118."

The Witness (continuing): "181 type, 4 scales sold; 182 type, 3 scales sold; 183 type, 1 scale sold; 344 type, 9 scales sold; 345 type, 239 scales sold, 346 type, 126 scales sold; 347 type, 46 scales sold; 348 type, 3 scales sold; 349 type, 1 scale sold; 353 type, 4 scales sold; 381 type, 636 scales sold; 382 type, 80 scales sold; 383
253 type, 983 scales sold; 384 type, 145 scales sold, 385 type, 34 scales sold, 387 type, 45 scales sold, 388 type, 1 scale sold, 581 type, 478 scales sold, 582 type, 2 scales sold, 583 type, 166 scales sold; 585 type, 33 scales sold, 587 type, 4 scales sold."

"For the entire year 1912 the total number of scales sold was 4,522, and the amount of these sales, $737,623.56. This, of course, includes the number given in my statement of the scales sold up to August 31st, 1912.

Q. Now, Mr. Slater have you included in these sales any cylinder scales built and sold from Toledo called foreign scales?

A. No, sir.

Q. Or rather, foreign sales I suppose they call them, do they?

A. Foreign Sales.

Q. Have you got those?

A. Yes, sir.

Q. By the year?

A. Yes, sir.

Q. And the number or without the number?

A. I have the number.

Q. All right.

The Master: What period do you refer to, Mr. Zane?

Mr. Zane: For the whole period he has gone over by years.

A. The year ending December 31st.

Mr. Meads: Wait just a minute. The question was, "Have you them?" I don't object to that.

The Master: You can answer that, yes or no.

A. I said yes.

Mr. Zane: Now, give them.

Mr. Meads: I object, foreign sales, he cannot cover that in this proceeding, certainly.

Mr. Zane: They are scales billed and sold in this country, manufactured in this country and sold across the water. In other words, by making them here they infringe the patent. That is a legal question that we will argue out later with the authorities. We now want to get the evidence in without spending time on arguing the matter.

The Master: Well, without passing finally on that question of foreign sales, as I understand it, these scales were all made
254 here at Toledo and sold through the sales agencies of this company in foreign countries?

Mr. Meads: In foreign countries, the sales made in foreign countries.

The Master: Well, the shipments were from here.

Mr. Zane: Yes sir.

The Master: Did they go directly to the customer or did they go to the branch in the foreign country? Has that been proven yet?

Mr. Zane: How were those scales shipped, to the individual purchaser, or to some agent?

A. I believe to agents.

Q. They were shipped to the agent?

A. I believe so.

Mr. Meads: Yes, and distributed there and collected for there.

The Master: Well, I will take this testimony, gentlemen. It will be separate from the other testimony and pass upon the question as to whether it is properly a part of this account later along. Whatever view I might take of it here, the Court might take a different view and would require the evidence anyway.

Mr. Meads: Well, it may be understood then, to save interruption of the witness, that objection is made by counsel for the defendant to any testimony relating to scales shipped to foreign countries, in which the sale was made there and the scale shipped to the agent.

The Master: It may be so understood, and the testimony is taken subject to that objection.

"There were no foreign cylinder scales sold in 1906 or '7. For the year 1908 there were three scales sold and the amount of these sales was $367.

"For the year ending December 31st, 1909 the number of foreign scales sold was 96, and the amount, $6,020.84. Year ending December 31st, 1910, the number of scales sold was 263, amount, $15,671. Year ending December 31, 1911, number of scales sold, 199, amount $13,130. Eight months ending August 31st, 1912, number of scales sold, 145; amount, $9,786.25.

The scales mentioned were all cylinder scales.

"We did not include Canadian sales in either the United States sales or the foreign sales.

"I have also kept a record from the books of the deductions both from the gross number of scales sold on account of the Scales
255 Repossessed by the company, and deductions from the gross amount of scales sold on account of deductions from the Purchase Price for Exchange scales or return scales. These deductions are kept separate as between United States and foreign sales. Considering now the United States sales of cylinder scales, the deductions for the year 1906 are 2 scales. Prior to 1909 the gross amount of debits; that is, scales never delivered, or orders not completed or scales returned were debited to the Sales Account in the ledger.

After 1909 the account called the Charge Back account was opened for these debits or charges against the sales Account.

"For the year ending December 31, 1906, 2 scales, amount $216."

"For the year ending December 31st, 1907:

Charges to Sales:

Number of scales	62
Amount	$6,922

Year ending December 31st, 1908:

Charges to Sales:

Number of scales	183
Amount	$22,295.75

Year ending December 31st, 1909:

Charges to Charge Back Account:

Number of scales	344
Amount	$41,656.65

Charges to Sales:

Number of Scales	59
Amount	$7,285.68

Year ending December 31st, 1910:

Charge backs:

Number of scales	486
Amount	$56,285.65

Charges to Sales:

Number of scales	69
Amount	$10,155.20

Year ending December 21st, 1911:

Charge backs:

Number of scales	602
Amount	$70,758.28

Charges to sales:

Number of scales	52
Amount	$7,223.84

256 Eight months ending August 31st, 1912:

Charge backs:

Number of scales	356
Amount	$44,666.41

Charges to Sales:

Number of scales	13
Amount	$2,408.25

These Charge backs and Charges to Sales are all cylinder scales, and I have them classified as to type numbers.

"Then testimony as follows:

Q. Well, the two scales returned in the year ending December 31, 1906, what are those type numbers?
A. 300.
Q. Both 300?
A. Both 300.
Q. Now, 1907, the 62 scales. Those 62 scales in 1907, classify them.
A. 300 type, 17 scales; 344 type, 43 scales; 345 type, 2 scales; making a total of 62.
Q. 1908?
A. 300 type, 6 scales; 344 type, 48 scales; 345 type, 87 scales; 346 type 32 scales; 347 type, 8 scales; 348 type, 2 scales; total 183.
Year ending December 31, 1909, 81 type, 1 scale; 82 type, 6 scales; 83 type, 1 scale; 182 type, 1 scale; 344 type, 1 scale; 345 type, 11 scales, 346 type, 27 scales; 347 type, 2 scales making a total of 50.
Q. Also in 1909?
A. Year ending December 31, 1910.
Mr. Meads: You have not finished 1909, have you? There are 344 scales in the other account.
A. I will give you that afterwards, this is one account.
Mr. Zane: He is going through this first.
Mr. Meads: This is the what?
A. Debit to Sales.

Mr. Zane:

Q. All right.
A. 1910, 81 type, 1 scale; 82 type, 5 scales; 83 type, 1 red.
Q. What do you mean by 1 red, is it a deduction?

Mr. Meads: It is a deduction in a Pickwickian sense I suppose.
The Master: What do you mean by red?

257 Mr. Zane:

Q. Explain what you mean by 1 red, is it correcting a charge made in the preceding years, is that what it is?

A. I can't say for the moment.
Q. Well, is it a deduction or ought it to be an addition?
A. It is an addition.
Q. It is an addition, all right.
Mr. Meads: What is the item marked 1 red? He started to give it.

Mr. Zane:

Q. 83. 1 red is an addition. Now, any other 83s?
A. No.
Q. All right.
A. 181 type, 2 scales; 182 type, 4 scales; 344 type, 1 scale; 345 type, 14 scales; 346 type, 30 scales; 347 type, 6 scales; 349 type, 1 scale; 353 type, 1 scale; 381 type, red, 1 scale.
Q. That's an addition then, is it?
A. Yes sir.
Q. All right.
A. 382 type, 3 scales; 383 type, 1 scale; 384 type, 1 scale; 387 type, 1 scale; a total of 69.
1911, 81 style or type, 1 scale, 82 type, 2 scales; 83 type, 1 scale; 182 type, 4 scales; 345 type, 15 scales; 346 type, 12 scales; 353 type, 2 scales; 381 type, 5 scales; 383 type, 2 scales; 384 type, 3 scales; 385 type, 1 scale; 387 type, 4 scales, making a total of 52.
Q. Now, August 31st, 1912, that period of eight months?
A. 182 type, 1 scale; 345 type, 1 scale; 346 type, addition in red, 1 scale; 381 type, 3 scales; 383 type, 8 scales; 384 type, 1 scale; 387 type, 1 scale; 581 type, addition in red 3 scales; 583 type, 1 scale; 585 type, 1 scale; a total of 13.
Charge Backs Account——
Q. Beginning in 1909?
A. Yes sir. 81 type, 3 scales; 82 type, 7 scales; 83 type, 3 scales; 84 type, 1 scale; 85 type, 4 scales; 183 type, 1 scale; 344 type, 13 scales, 345 type, 152 scales; 346 type, 108 scales; 347 type, 38 scales; 348 type, 8 scales; 350 types, 2 scales; and unable to classify, 6 scales; making a total of 344 scales.
Year ending December 31, 1910, 81 style, 8 scales; 82 style, 31 scales; 83 style, 15 scales; 85 style, 1 scale; 86 style, 1 scale;
258 181 style, 7 scales; 182 style, 16 scales; 183 style, 4 scales; 186 style, 1 scale; 300 style, 1 scale; 344 style, 8 scales; 345 style, 134 scales; 346 style, 167 styles; 347 style, 64 scales; 348 style, 8 scales; 350 style, 1 scale; 353 style, 7 scales; 381 style, 10 scales; 385 style, 1 scale; unable to classify, 1 scale; total of 486.
Year ending December 31, 1911: 81 style, 18 scales; 82 style, 31 scales; 83 style, 8 scales; 84 style, 2 scales; 181 style, 7 scales; 182 style, 18 scales; 183 style, 7 scales; 344 style, 1 scale; 345 style, 131 scales; 346 style, 146 scales; 347 style, 51 scales; 348 style, 3 scales; 349 style, 1 scale; 350 style, 1 scale; 353 style, 7 scales; 381 style, 80 scales; 382 style, 15 scales; 383 style, 32 scales; 384 style, 18 scales; 385 style, 6 scales; 386 style, 1 scale; 387 style, 2 scales; 581 style, 15 scales; 585 style, 1 scale; making a total of 602.
For the period of eight months ending August 31, 1912: 81 style, 1 scale; 82 style, 6 scales; 83 style, 1 scale; 87 style, 1 scale; 181

style, 1 scale; 182 style, 2 scales; 183 style, 1 scale; 300 style, 1 scale; 344 style, 1 scale; 345 style, 43 scales; 345 style, 29 scales; 347 style, 16 scales; 353 style, 2 scales; 383 style, 82 scales; 382 style, 13 scales; 385 style, 3 scales; 384 style, 14 scales; 581 style, 55 scales; 387 style, 6 scales; 381 style, 64 scales; 583 style, 8 scales; 585 style, 3 scales; 587 style, 1 scale; making a total of 356.

"The amount of net sales of cylinder scales after making these deductions are by years as follows:

For the year ending December 31st, 1906.....	$5,544.00
For the year ending December 31st, 1907.....	147,836.00
For the year ending December 31st, 1908.....	437,076.75
For the year ending December 31st, 1909.....	556,108.08
For the year ending December 31st, 1910.....	722,625.76
For the year ending December 31st, 1911.....	725,671.29
For 8 months, ending August 31st, 1911.....	469,031.71

"These figures include both the United States and the foreign sales. The separate net sales for the United States only are as follows:

For the year ending December 31st, 1906.....	$5,544.00
For the year ending December 31st, 1907.....	147,836.00
For the year ending December 31st, 1908.....	436,709.75
For the year ending December 31st, 1909.....	550,503.24
For the year ending December 31st, 1910.....	707,246.26
For the year ending December 31st, 1911.....	712,545.14
For the 8 months, ending August 31st, 1911.....	459,355.76

259 "I have seen the account of sales of cylinder scales filed in this case by the Toledo Company for the 1912 period and attempted to check that account with the books, but I was unable to do so. It does not correspond with the books. I examined the scale taken out and the gross amounts and could not possibly agree them. I could not identify these items in the books, nor could I verify the selling prices from the books, except in one or two cases the higher prices agreed, but the majority in the lower prices did not agree.

"The allowances on the books against Foreign Sales of cylinder scales are as follows:

"None for the years 1906, 1907 and 1908. For the year ending December 31st, 1909, amount $416.00. Year ending December 31st, 1910, amount $291.50. Year ending December 31st, 1911, amount $3.75. Eight months ending August 31st, 1911, amount $110.24.

"In the account of debits to sales the figures in red are accounted for in this way: As an example, take the period ending August 31, 1912, 2 scales; 581 style, were sold for $250, replacing 2 scales 383 style, $370, the difference of $120 being debited to United States sales account, so, therefore, the 2 scales, 383 style, appear in black figures, and the 2 scales of 581 style appear in red, one figure offsetting the other, the original sale having gone through previously. It is a substitution, so that the figures in red are not an addition, as I stated."

sale of cylinder scales in the United States is shown on the books by having all exchange scales taken in exchange debited to the account, while on the credit side of the account are represented exchange scales which had been sold. The difference between the debit and credit is the amount charged off. I have taken the balance, that is, the debit less the credit, in my account, and have included scales taken in exchange, allowances, special allowances, etc., wherever they appeared on the books.

"For the year 1908, the Debit Account shows:

Exchange Scales	$3,000.00

This is an inventory to start the year with, and was taken January 1st, 1906.

Exchange Scales Account, Debit	$15,554.45

This debit represents the balance on the Exchange Scale
260 Account of scales taken in exchange, less any resale of exchange scales credited to that account.

Allowances on Sales, etc.	$1,531.55

This allowance figure represents numerous allowances in that particular year on sales of fan scales and cylinder scales.

Repairs on Scales	$614.31
Total	20,700.31

"The first item, $3,000, inventory on January 1st, represents fan scales entirely, as at that period no cylinder scales had been sold. The allowance figure, $15,554.45, represents all kinds of exchange scales, but for the year 1908 it is practically all on fan business. In the allowance figure, $1,531.55, I do not know of any allowances for cylinder scales in that amount, but if there were any, it would be contained in that figure. The item, 'Repairs on Scales,' would also cover any repairs on cylinder scales if there were any in the account for that period. There are no credits to this account in 1906."

The allowances for the next year, 1907, on the debit side are:

Exchange Scales Account	$24,737.50
Toledo Scale Allowances, including advertising	5,219.67
Allowances on Sales, etc.	2,641.26
Total	32,598.43

"The 1907 entries on the credit side are as follows:

Repairs on scales	$160.29
Second hand scales sold	850.00
Total	$1,010.29

leaving a balance on the debit side of $31,588.14.

The item, $160.29, Repairs on Scales on the credit side, represents a profit on this account.

"The allowances for the year 1908, on the debit side are:

Exchange scales account	$82,905.26
Toledo Scales Allowance, including advertising	11,643.97
Allowances on sales, etc.	2,571.22
Repairs on scales	1,013.57
Total	$58,134.02

261 "The allowances credits for 1907 are:

Second hand scales sales	$21,647.10
Deducting this amount from the total debit, leaves a net debit for the year of	76,486.92

"For the year 1909 the allowance account on the debit side is as follows:

Exchange scales	$67,628.52
Toledo scale allowances	13,427.71
Allowances on sales, etc.	2,257.69
Repairs on scales	967.12
Total	$84,281.04

The credits for this allowance account in 1909 are:

Second hand scale sales	$48,210.70
Deducting this amount from the total debits, leaves a net debit for the year of	36,070.34

"For the year 1910 the Allowance Account on the debit side—as follows:

Exchange scales	$90,502.22
Toledo scale allowances	10,827.65
Total	$101,329.87

"The credits on the Allowance Account for 1910 are as follows:

Inventory of rebuilt and second hand scales, December 31, 1910	$3,896.25

That is the first period that inventory of Rebuilt and Second Hands appears on the ledger.

Repairs on scales	$598.57
Second hand scale sales	53,879.97
Second hand Department, rebuilt Toledo Scale allowances	38,227.82
Total credits	$96,602.61

Deducting this amount from the total debits leaves a net balance for the year of..... $4,727.26

"For the year 1911 the Allowance account on the debit side is as follows:

Inventory of rebuilt and second hand scales, January 1, 1911	$3,896.25
Exchange scales account	99,047.24
Toledo scale allowances	29,051.47
Special allowances	22,096.23
Total debits	$154,091.19

262 "The credits to the Allowance account for 1911 are as follows:

Inventory of exchange scales, December 31, 1911	$22,851.31
Inventory of rebuilt and second hand scales	6,463.33

(They have two inventories for this year.)

Repairs on scales	2,274.91
Second hand scales sales	18,466.79
Rebuilt scales sales	75,654.56
Refinished Toledo scales sales	700.00
Total credits	$126,409.90

Deducting that amount from the total debit leaves a net debit for the year of $27,681.29.

"For the Allowance Account for the year ending December 31, 1912, the debit side is as follows:

Inventory exchange scales, January 1, 1912	$22,815.31
Inventory rebuilt and second hand January 1, 1912	$6,463.33
Exchange scales	82,988.44
Toledo scale allowances	38,280.45
Special allowances	17,270.99
Special allowances for marring	6,787.87
Total	$174,642.39

"The Allowance scale account on the credit side is as follows:

Inventory of exchange scales, December 31, 1912	$20,625.93
Inventory rebuilt and second hand scales December 31, 1912	5,855.00
Second hand scale sales	8,529.05
Refinished Toledo scale sales	42,726.00
Refinished competitors scale sales	68,844.00
Total credits	$146,579.98,

which deducted from the total debits leaves a net debit for the year of $28,062.41.

"That is for the entire year 1912, and these figures for all the years cover both cylinder and fan scale business. These particular accounts cannot be distinguished between cylinder and fan business. It is probably possible that a few of the cases might
263 be found but taking the account together it is impossible to distinguish them.

"The total sales of all scales of all descriptions, not including exchange scales or second hand scales sold, are as follows:

Year ending December 31, 1906	$487,664.51
Year ending December 31, 1907	573,492.06
Year ending December 31, 1908	858,268.76
Year ending December 31, 1909	1,140,255.47
Year ending December 31, 1910	1,215,221.54
Year ending December 31, 1911	1,201,441.66
Eight months ending August 31, 1912	797,690.51
Year ending December 31, 1912	1,212,104.20

"I have also the total sales of fan scales sold in the United States, less all deductions, charge backs, and charges to scale accounts. In other words, these are the net figures:

Year ending December 31, 1906	$482,120.51
Year ending December 31, 1907	416,212.56
Year ending December 31, 1908	406,405.51
Year ending December 31, 1909	556,338.64
Year ending December 31, 1910	481,255.07
Year ending December 31, 1911	459,382.13
Year ending December 31, 1912	494,826.48
Eight months, ending August 31, 1912	311,626.01

"The net sales of foreign scales in foreign countries are as follows:

Year ending December 31, 1906	None
Year ending December 31, 1907	$9,443.50
Year ending December 31, 1908	14,786.50
Year ending December 31, 1909	27,808.75
Year ending December 31, 1910	11,340.71
Year ending December 31, 1911	16,388.14
Year ending December 31, 1912	29,871.02
Eight months, ending August 31, 1912	17,042.79

"Mr. Zolg testified to a matter of Agents' Balances, written off in a certain year. I have investigated to see what Agents' Balances were written off and find that there was the following entries on the books in the Sales Journal, section 3, December 31, 1911, representing a total of $14,118.56. This entry is itemized and shows a writing off of a number of Agents' accounts as follows:

H. F. Abbott, $30.15; H. H. Bone, $29.15; L. D. Bartlett, $.25;

A. W. Beers, $759.53; Fred Peilstein, $1.00; D. E. Bowden,
264 $.50; E. J. Childs, $15.75; B. E. Crawford, $81.91; Henry Crotran, $.50; P. Dandnrond, $1.90; E. J. Duffin, $1,606.39; J. Duggan, $30.25; J. H. Faulkner, $881.78; G. P. Foster, $.95; C. S. Fox, $1.25; C. S. Goddard, $.50; J. A. Haink, $11.62; J. L. Heaid, $1.25; J. D. Jones, $2.25; L. E. Knapp, $7.99; C. C. Lake, $234.00; L. A. Leresgue, $.50; H. A. Massie, $581.01; C. E. Mayberry, $62.10; L. P. Miller, $4.11; W. E. Molaison, $98.53; H. L. Noble, $1.50; C. C. Nott, $1.20; W. E. Pitcher, $4.67; M. A. Potter, $36.15; R. D. Preston, $.50; J. R. Purifoy, $2.45; H. L. Rachal, $2.00; H. F. Raymond, $81.00; H. A. Reed, $8,356.07; W. E. Robinson, $63.71; J. J. Ryan, $5.75; C. N. Sloate, $19.80; F. T. Spephenson, $.50; M. W. Stewart, $12.16; H. F. Taylor, $.25; R. J. Temple, $3.50; A. G. Tidrick, $.28; J. J. Wickham, $1,061.90; W. L. Wickhman, $20.95; making a total of $14,118.56.

"In the Sales Journal for the year 1911 this item of $14,118.56 appears as a reserve for 'Losses on Agents' Accounts.' It also appears as a credit to 'Agents' Accounts.'"

(These two pages showing these accounts on the Sales Journal were received in evidence and marked Plaintiff's Exhibit No. 37.)

"The debit of that matter is found on the statement headed 'Consignment Statement.' It consists of two sheets put into the book, and is headed in pencil, 'Dr. Rec. for losses agt. a/cs $14,118.56. Cr. act. $14,118.56, sales agent.' And then follows the names with the amounts opposite, stated above."

"Referring to the Canadian Business, I have taken the Gross Sales, the Charge Backs and Charges to Sales and the net amount of sales.

Then testimony as follows:

Q. Give us the net cylinder sales after Charge Backs and Charges to Sales Account have been deducted.

Mr. Meads: I object, if your Honor please.

The Master: What is the objection?

Mr. Meads: Canadian scales are not involved in this case.

The Master: That's a question yet to be determined as I understand it.

Mr. Meads: In the first instance there is no presumption that they would be involved any more than foreign sales.

265 The Master: Well, They I assume stand in the same position as other foreign sales and that's a question in the case. The plaintiff contends they have a right to an accounting as to those scales, and defendant claims, as I understand it, that they have not. The only way that the Master can do is to take the testimony on that subject and it will afterwards be determined whether it is property included in this accounting. I will overrule the objection and take the testimony subject to the objection.

For the year ending December 31, 1908 No. scales 61..	$10,610.00
For the year ending December 31, 1909 No. scales 350	48,924.50
For the year ending December 31, 1910, No scales 460	73,358.35
For the year ending December 31, 1911 No. scales 621	97,798.51
For the year ending December 31, 1912 No. scales 636	108,973.70
For 8 Mos. period ending August 31, 1912 No. scales 397	67,190.45

Then testimony as follows:

Q. Now, your next item is fan, is it?
A. Fan and miscellaneous.
Q. All right. Tell us this next.
A. This is net.
Q. These fans are net after all deductions?
A. For Charge Backs and Charges.

Mr. Meads: I don't understand Mr. Zane's question.
Mr. Zane: These are fan.
Mr. Meads: The number of fan scales sold?
Mr. Zane: In Canada.
Mr. Meads: Then I shall certainly object.
The Master: Because they are fan scales?
Mr. Meads: Yes, you might as well ask us what we got for an automobile in Canada. There ought to be a limit somewhere.
Mr. Zane: This is necessary evidence for the purpose of arriving at a comparison. We have to have it in order to figure certain figures later. It is impossible to do it otherwise.
Mr. Meads: Let the record show that counsel is making this statement for comparison only.
266 Mr. Zane: For deductions from it.
The Master: Of course, they don't claim for recovery on account of sales of fan scales.
Mr. Zane: No, sir, we do not.
The Master: But where the business is carried on together it may be necessary for some purpose to have fan scale sales transactions. Objection overruled.

A. Year ending December 31, 1906.

Mr. Hibben: This is taken also subject to the objection?
The Master: Yes, everything relating to the Canadian business goes in subject to the general objection made at the start.

A. (Continuing:) Year ending December 31, 1906, $9,553.

Mr. Meads: Now, youd Honor please, it is apparent there could be no comparison in Canada in the fan scales because no cylinder scales were produced that year at all.

The Master: Well, this cannot do any harm as they are not basing any right of recovery on the sales of fan scales. If counsel needs that evidence on his theory for working out some conclusion, I think he has a right to take it.

"The net sale of fan scales in Canada are:

For year ending Dec. 31, 1906	$9,553.00
For year ending Dec. 31, 1907	4,038.95
For year ending Dec. 31, 1908	4,849.96
For year ending Dec. 31, 1909	26,846.19
For year ending Dec. 31, 1910	33,662.91
For year ending Dec. 31, 1911	51,845.72
For year ending Dec. 31, 1912	67,029.24
For eight months' period ending August 31, 1912....	41,769.55

"The total amounts of Canadian Sales including both cylinder and fan scales are:

For year ending Dec. 31, 1906	$9,553.
For year ending Dec. 31, 1907	4,038.95
For year ending Dec. 31, 1908	15,459.96
For year ending Dec. 31, 1909	75,770.69
For year ending Dec. 31, 1910	107,022.26
For year ending Dec. 31, 1911	149,644.23
For year ending Dec. 31, 1912	176,002.94
For eight months' period ending August 31, 1912....	108,960.00

267 "All the entries of the Canadian business are carried on the Toledo books of the Company.

From memory, I believe in the years 1910, 1911, 1912 they opened separate Canadian ledgers. The canadian sales are included in a section in the same journal as the United States sales, this sales Journal being divided into the sections 1, 2, 3 etc., and the Canadian section having a separate number. It is in loose leaf form and bound together with the other sections to make a book. In other words, they are separated into sections in the same book, the Canadian business being a separate section. The result of the Canadian business was incorporated into the Profits and Loss Account of the Toledo Company.

WILLIAM A. ZOLG, a witness called on behalf of plaintiff, testified as follows:

Direct examination.

By Mr. Zane:

I am the same Mr. Zolg who testified previously in this case and I am producing at this time the monthly statement for February 1911 carrying in the first set of columns the totals for the two months ending February 28, 1911, which I was asked to produce by Mr. Zane.

"I found this monthly statement for February 1911 among the documents of the Toledo Scale Company and it purports to show the statement of the business of the Company for the two months ending February 28, 1911 as well as for the month of February 1911, as shown on the books. (This statement was admitted in evidence over the objection by counsel for the defendant and marked, Plaintiff's Exhibit No. 38.)

Cross-examination.

By Mr. Meads:

'The monthly statement marked, "Plaintiff's Exhibit No. 38, consists of ten pages all of which are written in pencil and the statement is not signed by any one. This statement has not been used by us at banks or elsewhere for the purpose of obtaining credit. It is a mere remorandum for our own advice as to the general condition of the business as shown by the books. In this state-
268 ment like in the other statements of similar character offered in evidence no deduction was made for the increase in Agents' Bebit Balances during the period.

WILLIAM SLATER, a witness called on behalf of the plaintiff, resumed the stand for further examination and testified as follows:

Direct examination.

By Mr. Zane:

I will now give you the total net sales of United States scales as follows:

For year ending Dec. 31, 1906	$487,664.51
For year ending Dec. 31, 1907	573,492.06
For year ending Dec. 31, 1908	858,268.76
For year ending Dec. 31, 1909	1,140,255.47
For year ending Dec. 31, 1910	1,215,221.54
For year ending Dec. 31, 1911	1,201,441.66
For year ending Dec. 31, 1912	1,212,104.20
For eight months' period ending August 31, 1912	797,690.51

The total deductions for allowance for exchange scales for the same period are as follows:

For year ending Dec. 31, 1906	$20,700.31
For year ending Dec. 31, 1907	32,598.43
For year ending Dec. 31, 1908	98,134.02
For year ending Dec. 31, 1909	84,281.04
For year ending Dec. 31, 1910	101,329.87
For year ending Dec. 31, 1911	154,091.19
For year ending Dec. 31, 1912	174,642.39

To obtain the figure for the eight months ending August 31, 1912, it is necessary to pro rate because of the final inventory.

"When these allowances and deductions are subtracted from the net sales, the result added to whatever is realized from the sale of second hand and Rebuilt and Exchange Scales would give us the total net sales of the business—the total results of the business in money.

"The amounts that should be added as net sales of Second Hand and Rebuilt and Exchange Scales are as follows:

269 None in the year ending Dec. 1906.

For year ending Dec. 31, 1907	$1,010.20
For year ending Dec. 31, 1908	21,647.10
For year ending Dec. 31, 1909	48,210.70
For year ending Dec. 31, 1910	96,602.61
For year ending Dec. 31, 1911	126,409.90
For year ending Dec. 31, 1912	146,579.98

(Permission was given by the Master to withhold the cross examination until such time as the defendant could review the testimony given by Mr. Slater and make such research thereon as is considered necessary.)

Chicago, June 26, 1916.

Met pursuant to notice and agreement of parties.

Present:

Mr. Zane and Morse, for complainant;
Messrs. Meads and Hibbens for defendant.

WILLIAM SLATER, recalled on behalf of complainant for further examination, testified as follows:

Direct examination.

By Mr. Zane:

"I am the William Slater who has already testified in this case, and since the last adjournment I have examined further books of the Defendant Company known as the Shipping Records. These Shipping Records were in book form numbered serially with about three thousand records in each book. I examined all the books from January 1, 1904 to September 11, 1912, approximately forty books. These shipping records are arranged in serial order according to the factory numbers of the scales shipped, both cylinder and fan scales. Each page of the shipping book is divided into spaces, I think about fifteen spaces on a page, and in each space a buff colored ticket was gummed which gives the following details: the style number, factory number, date shipped and to whom.

"I have already given in my last testimony such figures as to sales and numbers of scales as were taken off the sales journals and invoices of each sale. I attempted to verify these figures by these shipping Book Records, that is as to the numbers of scales sold. I

took from these Shipping Records the numbers of every style
270 of cylinder scale that was shipped, arranging them by years as follows:

For year ending Dec. 31, 1906, 97 cylinder scales shipped
For year ending Dec. 31 1907, 1,713 cylinder scales shipped
For year ending Dec. 31, 1908, 3,976 cylinder scales shipped
For year ending Dec. 31, 1909, 4,963 cylinder scales shipped
For year ending Dec. 31, 1910, 6,109 cylinder scales shipped
For year ending Dec. 31, 1911, 4,601 cylinder scales shipped
For 8 mos. ending Aug. 31, 1912, 3,136

On hand September 3, 1912, 280, making a total of 21,875 cylinder scales shipped.

"The figures for cylinder scales sold for this same period by years, as taken from the records of sales are as follows:

For year ending Dec. 31 1906, 57
For year ending Dec. 31, 1907, 1,221
For year ending Dec. 31, 1908, 3,278
For year ending Dec. 31, 1909, 1,357
For year ending Dec. 31, 1910, 5,641
For year ending Dec. 31, 1911, 5,332

For eight months period ending August 31, 1912, 3,262; on hand at September 3, 1912, 1,839, making a total of 24,998 scales. Disregarding the number of scales on hand the comparison would be 24,595 cylinder scales shown by the shipping records to have been actually sent out, and 23,149 scales shown by the customers' accounts to have been sold, but 280 in addition to the 24,595 are on hand not shipped. The shipping record shows 1,446 more scales sent out than the customers' ledger shows sold. I couldn't tell from the books what had become of the 1,446 scales. It is a difficult matter to agree the various scales shipped with the various scales sold in several cases, for the reason that the scales go from the factory on consignment and they are not sold for a year or possibly two years afterwards. The figure for the scales shipped includes the scales sent out on consignment as well as the scales sold during the
271 period. The numbers of scales sold 23,149, refers only to those scales shown by the Customers' Ledger and the Journals as sold.

"I have given you in the above schedule the scales shown as sold by the Customers' Ledger without deducting the Charge Backs. After deducting Charge Backs and Debits to Sales, the schedule would be as follows:

"For the year ending December 31, 1906, 55 scales, 2 less than 57; for the year ending December 31, 1907, 1,159 scales; for the year ending December 31, 1908, 3,052 scales, instead of 3,235 and 43 Canadian; for the year ending December 31, 1906, 3,929 scales, instead of 4,323 and 34 Canadian; for the year ending December 31, 1910, 5,060 scales, instead of 5,519 and 22 Canadian; for the year ending December 31, 1911, 4,675 scales; and for the eight months ending August 31, 1912, 2,894 scales."

"These Shipping Books were produced to me by Mr. Zolg and his assistant Mr. Randolph."

Then testimony as follows:

Q. Now, in going over the books did you ascertain where the castings came from, both for Toledo and Windsor?
A. Yes sir.
Q. They came from what factory?
A. Hamilton Foundry, Hamilton, Ohio.
Q. Now, from the Toledo Factory what was shipped to the Windsor Plant of the Toledo Company in Canada.

Mr. Meads: If he knows.
Mr. Zane: I am asking him about the books.

A. Various parts in connection with the assembling of cylinder scales?
Q. Yes, you mean by by various parts what?
A. Well, pinions, spiders, hubs, dash boxes, screws, and various other parts.
Q. So far as invoices show no castings went directly from the Toledo factory to the Windsor Factory?
A. No sir.
Q. But the parts did?
A. The parts did.
Q. The other parts of the scales?
A. Yes sir.
Q. And, how about charts, did they go?
A. Well, sometimes I noticed it is stated "End Chart Spiders." Of course, I do not know the technical terms and cannot form an opinion.

272 Q. Now, I wish you would state what is the situation on the books as to whether any separation can be made in the business done at Toledo between the Canadian, work for the Canadian business, and the other business done from Toledo.
A. No, sir, in my opinion they can't be separated.

"Comparing now the numbers of cylinder and fan scales sold during the entire period from 1906 to 1912, I find that more fans were sold than cylinders in the proportion of about two to one. The bookkeeping and things of that kind with reference to scales is about the same whether you sell a cylinder or a fan. My work on these Shipping Records took me about five or six weeks. I stayed at Toledo from February 15 to April 18 and then devoted about two weeks additional time to this work in Chicago.

(The Master stated that the testimony of Mr. Slater should be written up before the cross-examination by defendant.)

JAMES HALL, a witness called on behalf of plaintiff, testified as follows:

Direct examination.

By Mr. Zane:

I reside at Evanston and I have been a certified public accountant for twenty-three years. I am a member of Marwick, Mitchell, Peat & Co. My accounting experience covers a period of twenty-three years. The first ten were spent in Great Britain, the next two in Africa, and between ten and eleven years in this country. I hold the degree of Chartered Accountant from the Institute of Accountants and Actuaries of Glasgow. I am a Chartered Accountant in Canada, a certified public accountant in I think seven states in the Union and Chairman of the Bureau of Examiners for the University of Illinois of Accounting with a degree given by them, also a Fellow of the American Association of Public Accountants. My entire experience has been along the lines of examining accounts for the purpose of determining profits and financial positions of companies.

I made up the statement of profits of cylinder scales from 1906 to 1912 of the Toledo Computing Scale Company and have di-
273 vided the same in Bases number- 1, 2, 3, and 4. The Basis No. 1 is found under the side heading on the page which is entitled 'Toledo Computing Scale Company, Profits on Manufacture and Sale of Cylinder Scales for the year ending December 31, 1906' and then follows the statement 'Based upon evidence submitted by William Slater and William Zolg and other witnesses for the plaintiff, the Computing Scale Company, and on statements of Accounts prepared by defendant and produced by witness Zolg.' This same statement as to where the material was obtained applies to Basis No. 2, Basis No. 3, and Basis No. 4.

"With regard to Basis No. 1 is stated 'This statement is prepared on Basis of charging cost of manufacture, on net number of scales sold, that is, after deductions of 'Charges to Sales and Charge Backs.' "The first item on page on- (Basis No. 1) is 'Sales of cylinder scales, original sales 57 scales, amount $5,760.' " I obtain these figures from the testimony of Mr. Slater. The next item is 'Deduct—Charges to Sales, two scales.' This leaves the net figure of cylinder scales for the year ending December 31, 1906, 55 scales, amount $5.544.00. The Charges to Sales—the deductions—were $216.00. The figure $5,544.00 represents the selling price the amount charged to the customer—for the cylinder scales sold during that year.

"The next item is 'Deduct Cost of Cylinder Scales Sold.' Type No. 300, number sold, 55. I obtain the information for the type number and number of scales sold from the testimony of Mr. Slater.

Then Testimony as follows.

Q. "Cost—Labor and Material per scale, $14.86," where did you get that figure?

A. That is from the Account rendered by Mr. Zolg entitled "Account furnished by defendant."

Q. On what page in that Account?

A. On page 21. Now, type 300 or style 300 is an estimated cost based upon the testimony submitted by Mr. Zolg and the Account furnished by him.

Q. Yes.

A. During the two years on which he testified, that is 1911 and 1912, no scales of type 300 were sold, but I then took the nearest cost, that is, the cost of the scales of the nearest standard to 300, which is $14.86.

274 Q. And that is what you took?

A. That would be on 345.

Q. 345, and was that based also on the testimony of the witness at Toledo who testified that the 345 was a more costly scale than 300.

A. Yes.

Q. So the amount of Labor and Material on 55 scales at $14.86 is $817.30?

A. Yes.

Q. That is calculation?

A. Yes, sir.

"The next item is "Add overhead Expenses 49.42% of combined Labor and Material, ascertained as follows: Labor—Direct $45,479.61." I obtained this figure from plaintiff's Exhibit No. 14, the monthly statement of Account of the Toledo Company, this item being shown on the first page of the Exhibit.

"The next item 'Material, $34,706.39,' was taken from the same page of the same statement, Exhibit No. 14. This Material 'represents the Material going into the scale, the actual Material directly used in the scale.' This is the company's figure after adjustment of inventory at the beginning and ending of the year, but this figure $34,706.39 does not take into account any completed scales on hand at the end of the period December 31, 1906. If completed scales on hand had been taken into account it would have no effect whatever on this figure. The increase in stock scales of $2,744.19 would have tended to increase the Material used but would not have applied on the company's basis of figuring. I might say here that I adopted the basis used by the witness Zolg, which is applying the Overhead Expense against the Direct Labor and Direct Material, excluding the adjustment of any finished scales after the period. That adjustment would have been in favor of the Computing Scale Company or against the Toledo Computing Scale Company. In other words, if I had taken in account an inventory of completed scales on hand it might not have decreased this particular cost, but over the entire period it would have decreased the cost. I arrived at the percentage of 49.42 by taking the aggregate of the indirect expenses consisting of Tools and Patterns Expense, Experimental, Factory Supplies, Packing, Manufacturing Expenses, Indirect Labor, Power,

Heat and Light, less small amounts for discount on purchases,
275 took the aggregate of that figure and divided into that the aggregate of Direct Labor and Material. The figures used were to divide $80,186.10 into $39,631.03, and the resulting percentage is 49.42%, that is the way the Toledo Company ascertained the figure for the years 1911 and 1912 as testified to by Mr. Zolg and shown in his account. To the amount of Labor and Material, $817.30 should be added 49.42% of this figure or $403.91, totaling $1,221.21, for labor and material and factory overhead for these scales.

"The next item is Commissions to Agents, 31.73% of Sales, being ratio of total commissions to total sales. I take the figure for total Commissions—$154,734.45— from page 1 of the yearly statement, Plaintiff's Exhibit No. 14 and I find the figure for total Sales on page 2 of the same Exhibit. Now by dividing the total Commissions by the total Sales I obtain the percentage figure of 31.73%. I devised this basis of dividing Commissions, and assuming the same rate would apply to all scales, the proportion applying to cylinder scales would be $1,759.11 for 1906, or 31.73% of $5,544 of sales.

"Mr. Zolg in apportioning Commissions in his Account applied a Commission of $37.49 per scale in the year 1911, at least it worked out to that figure. He stated a figure of Commissions in that year which divided by the number of scales sold gives $37.49. In my judgment, this is a fair method of arriving at the proportion of Commissions to sales.

"The next item is Commercial and Selling Overhead. I ascertained this figure as follows:—taking the figure of $302,541.38 of "total Commercial and Selling Overhead" from page 2 of the yearly statement, Plaintiff's Exhibit No. 14 from which I deduct the Commissions to Agents, $145,734.45, shown on page 1 of the same Exhibit, and deducting Bond Interest, $3,600.01, taken from page 1 of the same Exhibit, (because I do not believe this item of Bond Interest is a Selling Expense, it is rather an item of financing the business which you could charge against profits ascertained on the business rather than against the Sales). Next deduct the Interest, $1,235.41 for the same reason as deducting the Bond Interest. There
276 was nothing to show that additional capital was required for this particular infringing cylinder business. That makes the 'net Commercial and Selling Overhead,' $142,971.57 after having taken off total deduction of $159,569.87. I have allowed a relative proportion of this amount to cylinder scales on the proportion the cylinder sales bear to the total sales for the entire business taken from the statement, Plaintiff's Exhibit No. 14, as $487,609.76. It is rather difficult to tell just how Mr. Zolg arrived at his method of ascertaining the Commercial and Selling Overhead chargeable to cylinder scales, but I recall that he testified he made up his account on pages 22 and 23 substantially as I have here.

"The next item is Loss on Agents' and Customers' Accounts—3% of net sales. During the entire period of the accounting the company has made no charge whatever in its profit and loss account with respect to bad debts and Losses on Agents' Accounts. It had

however written off against surplus certain very large losses over a certain period; namely, from 1906 to 1912. These losses written off averaged 2.91% of the sales, and an all around allowance of 3% was made by me. I raised this percentage to 3% because it was impossible to apply the losses as written off by the company against any particular year. Some of those written off in 1909 where they wrote off $96,000 evidently applied to years back. I did not apply it behind 1906. When applied over the entire period of 1906 to 1912, I found the average to be about 3%. I think this is a fair and reasonable allowance according to figures from their statements, as it is more than they wrote off. This item thus becomes $166.32 and is a further charge to Expense for Manufacture.

"The next item is 'Allowance for Exchange Scales—$18,554.45.' I take this figure from page 2 of the yearly statement, Plaintiff's Exhibit No. 14, and it represents according to that statement all the allowances made against the Selling Price of scales where they have taken Exchange scales for cash. I apportioned the allowances to cylinder scales on the same basis as the Commercial and Selling Overhead; namely, the relative proportion of cylinder scale sales to total sales. Mr. Zolg in his Acount did not bring in this allowance Account.

"Now, these items listed above, Labor and Material, Overhead Expense, Commissions to Agents, Commercial Selling Overhead, Losses on Agents and Customers' Accounts, Allowances for
277 Exchange Scales for the year ending December 31, 1906, amount to $4,988.04. Thus the difference between the Selling price of the scales and the total Expense of all kinds applicable to cylinder scales represents the profits on the manufacture and sale of cylinder scales $55.96. This is on Basis No. 1.

"On Basis No. 2 for this same year 1906, I have the same number of original scales 57 and deduct the Charges to Sales 2, leaving a net of 55 scales, selling for the net amount of $5,544. Then "Deduct cost of cylinder scales sold" and the difference between Bases No. 1 and 2 is that I have taken the number of scales sold on the Basis of 57 instead of 55 as in Basis No. 1, that is, an allowance is made in the Account for these two scales which were called "Charges to Sales." We allow for the cost of manufacture of these two scales, although they were returned to the Company and the Company took them back and presumably put them out again. In my judgment I believe the correct Basis is to take the net figure of 55 scales on which to figure the cost rather than the 57 scales, for one scale may have been sold twice, but the deduction of one coming back would reduce it to one again so that the 55 represents the scales actually sold. The next figure in Basis No. 2 is Overhead Expenses. The difference there is between $403.91 and $418.60, the additional Overhead applied to those two scales. The remaining figures are precisely the same as in Basis No. 1. So that the only difference between the two Bases is in regard to the items Labor and Material and Overhead on the two scales for which I have given the Company credit.

"Referring now to the next year—ending December 31, 1907—I prepared my Account in the same way by reference to the Account

filed in this action as an exhibit and the Toledo Company's yearly statement for this year, Plaintiff's Exhibit No. 13. On my account for this year 1907 on Basis No. 1, the first item is 'Sales of Cylinder Scales, original sales 1221 scales.' I obtained this figure from the testimony of Mr. Slater. Then 'Deduct Charges to Sales 62,' leaving net of 1,159 scales. The item 'Sales of Second Hand Scales for this years is $850' which I have taken from page two of the Toledo Company's yearly statement, Plaintiff's Exhibit No. 13. I took 26% of this figure of $850 because the sales of cylinder scales were 26% of the total sales of all scales, so that the addition for sales of
278 Second Hand Scales applicable to cylinder scales was $221 which increases my total for cylinder sales to $148,047. Mr. Zolg in his account ignored Second Hand Scales as they are not in his Account at all. He used the proportionate method in regard to Commercial and Selling Expense. It is not clear just what class of scales were included in Second Hand Scale sales. This could not be told from the books, so the only way to do was to take the proportion which cylinder scales bore to total sales. It makes no difference whether you can segregate that item as between cylinder and fan, because in this Accounting I have accepted the entire Expense of the business and taken the proportion applying to cylinders. We have accepted the entire loss on the new scales which came back as a charge, and consequently we should have the proportion applying of anything we can redeem on those scales.

"In the next item, the cost per scale of the type No. 300 is $14.86, obtained from Mr. Zolg's Account filed in this action, Types No. 345 and 346 are calculated by Mr. Zolg on page 19 of his statement. No. 344 is taken as the nearest approximate scale to the No. 300. The figure given by Mr. Zolg for the style 345, is $14.75, and the figure for cost of the Nos. 346 is $14.86. These amounts are simply calculations and I have used the higher amount as applying to the No. 300 scales.

"The next item is 'Add Overhead Expense 43.16% of combined Labor and Material' ascertained as follows: Labor—Direct, $62,-225.76. I take this figure from page 1 of the yearly statement, Plaintiff's Exhibit No. 13. The figure for Material—$66,290.87, I take from the same page of the same statement and that is taken after adjustment of raw material inventory by the Company on its own books. The total for these two, Labor and Material is $128,-516.63. This is divided into aggregate of Indirect Labor and Factory Expense, $55,475.80 giving the percentage of 43.16%. I take this 43.16% of $17,203.93 giving me the figure $7,425.22. I desire to call attention to the fact that on the Plaintiff's Exhibit No. 13, the yearly statement for the year 1907, the stock of raw material $30,-196.30 has not been taken into consideration in getting at the cost. Had it been, it would have had the effect of reducting the cost in the calculation of this Overhead. Also on Exhibit No. 13 the
279 item of Depreciation has been taken into consideration. In the statement for the next year, Plaintiff's Exhibit No. 14, Depreciation had not been set up. Each year the Company makes

a practice of revaluing such equipment as it has and the adjustments have been allowed for wherever they are stated.

"The next item is Commissions to Agents—34.2% of Sales. This is the ratio of total Commissions to total Sales. I obtained the figure for the total Commissions from page one, Plaintiff's Exhibit No. 13, and the figure for total Sales from page two of the same exhibit. The percentage of the Commercial and Selling Overhead applicable to cylinder scales is 26% of the total after deducting Commissions to Agents, Bond Interest and Interest from the item of Commercial and Selling Overhead. The total Commercial and Selling Overhead is $346,273.98, taken from page 2 of Plaintiff's Exhibit No. 13. I have deducted the Bond Interest and the Interest found on page 1 of this same exhibit as they are not Selling Expenses. (There is nothing on the books showing additional capital was required for this infringing business.) That brings the net figure for Commercial and Selling Overhead to $145,800, 26% of that, the proportion of cylinder sales to total sales, given the figure $37,908. The losses on Agents' and Customers' Accounts have been applied in this statement as 3% of the cylinder sales. I have allowed in this year's Account the figure claimed by the company in its Accounting for 1911 for the item Depreciation on Buildings. In 1911 the Company Claims $303.13 and I have carried this sum back into each year to 1907. The allowance for Exchange scales is $24,737.50, taken from page 2 of Plaintiff's Exhibit No. 13 and this figure represents the allowance for every kind of scale taken in Exchange and is exclusive of the Second Hand Scale sales, $850. I have taken 26% of that amount as chargeable to this Account. Mr. Zolg made no charge for this. The total profit therefore for this year 1907 is $23,707.77.

"In the Basis No. 2 for this year ending December 31, 1907, the difference consists solely of the allowance for the 62 scales charged back for Labor and Material and for Factory Overhead. In this Basis I have given the company credit for Direct Costs as well
280 as Indirect Cost for 62 additional scales. The other figures remain the same.

"For the year 1908 on Basis No. 1 the Sales of Cylinder Scales—3,235 scales—and the amount $459,372.50 I take from the testimony of Mr. Slater. We then deduct charges to sales 183 scales and the amount $22,295.75 applicable to these scales from the same testimony of Mr. Slater. This leaves a net number of 3,052 cylinder scales and a net amount of $437,076.75. The next item is Sales of Second Hand Scales—proportion 51.66% of $21,647.10. I take this amount from page 2 of Plaintiff's Exhibit No. 12, The total sales of Second Hand Scales is $21,647.10 and the proportion of that applicable to cylinder scales is 51.66% or $11,182.89. The percentage figure used is the proportion of cylinder sales to total sales.

"This gives a total figure for all cylinder sales of $448,259.64.

"The cost figures for the type numbers and the number of scales of each particular type sold comes from the Account furnished by defendant and the testimony of Mr. Zolg and other witnesses. This

gives a total for Labor and Material for cylinder scales of $45,187.17. The Overhead Expense arrived at in the same way is 41.19% of that amount. My figure for Direct Labor and Material is taken from page 1 of the yearly statement, Plaintiff's Exhibit No. 12. The total of these Accounts is $148,514.63 and dividing that into the aggregate of Indirect Labor and Factory expense figures 41.19%. I might say that the Indirect Labor and Factory Expense set forth on page 1 of this Exhibit No. 12 amounted to $2,058.47, less than the figure I have stated, the difference being an item of expense they have charged themselves on the appraisal of certain machinery.

"The next item is Commissions to Agents—38.39% of sales, being the ratio of total Commissions to total sales. I took the figures for total commissions from page 1 of the yearly statement Plaintiff's Exhibit No. 12, and my figure for total sales from page 2 of the same exhibit. The resulting proportion is 38.39% and the amount $172,086.82.

"The next item Commercial and Selling Overhead, $531,001.93 was taken from page 2 of Plaintiff's Exhibit No. 12 from which I deducted the Commissions to Agents already allowed for, Bond Interest and Interest (deducted for the reason heretofore stated),
281 which leaves the net Commercial and Selling Overhead $188,-249.67 of which 51.66% is chargeable against the cylinder scales and the amount apportioned is $97,249.78. For the losses on Agents' and Customers' Accounts I have used 3% of the cylinder sales, or $13,447.79, and have allowed for Depreciation on Buildings the same that was allowed by the Company on their Account for the years 1911, 1912.

"The allowance for Exchange Scales $82,905.26 I apportioned 51.66% to the cylinder business. Thus the total Expense is $389,-716.15, which deducted from $448,259.64 the total sales of cylinder scales, leaves a profit of $58,543.49 for the year 1908 on Basis No. 1.

"Basis No. 2 of this same year 1908 shows a difference due to the allowance for Labor and Material and Factory Overhead Expense on the 183 scales charged to sales, the other items remaining the same. Thus the profit on Basis No. 2 for the year 1908 is reduced to $54,-717.51, instead of the $58,543.49 on Basis No. 1.

"On Basis No. 1 for the year 1909 the original sales were 4,323 cylinder scales and the value of those sales, $605,466.41 these figures being taken from Mr. Slater's testimony. From these we deduct Charges to Sales and Charge Backs, 394 scales, taken from Mr. Slater's testimony, and the value of these deductions, leaving net sales of 3,929 scales with a value of $556,108.08. The sales of Second Hand Scales for that year, $48,345.70, I have taken from the yearly statement for 1909, Plaintiff's Exhibit No. 11, and the proportion applicable to cylinder sales is 48.8%, this being the proportion which cylinder sales bore to total sales of new scales. The Overhead Expense is 36.1% of the combined Labor and Material. I get my figure for Direct Labor and Material from page 1 of the yearly statement, Plaintiff's Exhibit No. 11. This statement is not a final statement of the operations of the company for the year as it

was made up before putting in the final closing entries. In order to find these final closing entries we had to check the statement up against Surplus as shown in subsequent statement.

"The Commission to Agents—35.36% of sales is arrived at as stated for proceeding years. The Commercial and Selling Overhead total is taken from page 2 of Plaintiff's Exhibit No. 11
282 with certain minor modifications of about $18,000 to bring statement in line with books. Deducting from this total figure the Commissions to Agents taken from page 1 Plaintiff's Exhibit No. 11, the Bond Interest, Interest and Preferred Stock Dividend, taken from the same exhibit, I get the net figure for Commercial and Selling Overhead of $279,869.26, of which 48.8% is chargeable to cylinder scales. The Losses on Agents' and Customers' Accounts is taken at 3% on sales and cylinder scales and the Depreciation on Buildings is the same amount as used each year. The Allowances for Exchange Scales, being Exchange Allowance and Toledo Scale Alowance combined, are taken from page 2 of Plaintiff's Exhibit No. 11 and 48.8% thereof charged to cylinder scales. Thus the profit on the manufacture and sale of cylinder scales before charging interest for that year is $100,759.24.

"On Basis No. 2 for this year 1909 the difference is in the Allowance for Labor and Material and Factory Overhead for those 394 scales charged back. The other items remain the same and on this Basis No. 2 the profit for the year 1909 is reduced from $100,759.24 to $92,815.20.

"Now, taking the year 1910 on Basis No. 1 the figures for cylinder sales, 5,619 scales, and the amount $789,358.11 is taken from Mr. Slater's testimony. The deductions Charges to Sales and Charge Backs, amounting to $66,732.35 are also taken from Mr. Slater's testimony. The amount for sales of Second Hand Sales, $92,107.79, of which 59.46% is apportioned to cylinder scales I have taken from page 1 of the yearly statement for 1910, Plaintiff's Exhibit No. 10. It is made up of two items, Second Hand Scales and Rebuilt Scales. I obtain the percentage figure of 59.46% by the proportion of the sales of cylinder scales to the total sales.

"For the next item. Cost of Cylinder Scales, sold, the type numbers and the number of scales sold of each type are taken from the testimony of Mr. Slater. The Cost figures are taken from the testimony of Mr. Zolg, and other witnesses. The figure of $15.49 for the cost of the number 381 scale is taken from page 21 of the Account Furnished by the Defendant, and similarly, the 383, 384,
385, 386, and 387, except that the No. 386 is not stated in
283 this Account but it is of the same series of scales. The next item of Expense is overhead Expense 62.95% of the combined Labor and Material. The totals for Direct Labor $95,120.13 and Materials $112,514.11 are taken from the yearly statement, Plaintiff's Exhibit No. 10 slightly modified by the addition of other figures to bring statement in line with books as this statement is not the final statement, $8,598, being the amount to add because of an adjustment of inventory. The Labor item was decreased by $1,322.14, though why I do not recall. I divided the total Labor

and Material into Indirect Labor and Factory Expense to get my percentage figure of 62.95%.

"The Commissions to Agents—31.38% of sales—was arrived at in the same way as I have spoken of in my testimony for preceding years. The Commercial and Selling Overhead is arrived at by combining several Accounts shown in the yearly statement, Plaintiff's Exhibit No. 10. I deducted from the total figures for the Commercial and Selling Overhead, Commissions to Agents, above referred to, Bond Interest and Interest, taken from this same exhibit No. 10, so that the net Commercial and Selling Overhead figures are $367,934.92, of which 59.46% is chargeable against cylinder sales. The Losses on Agents' and Customers' Accounts is figured at 3% on the same basis as in former years and the same allowance is made for Depreciation on Buildings as before. The Allowances for Exchange scales, being Exchange Scales Allowance and Toledo Scale Allowance, are taken from page 1, Plaintiff's Exhibit No. 10, and I took 59.46% as the proportion chargeable against cylinder scales. Adding together all these items of Expense makes a total of $671,201.12, which deducted from $77,393.05 of sales leaves a profit of $106,191.93 on Basis No. 1.

"On Basis No. 2 for this same year 1910 the difference is in allowing as an expense the Cost of Labor and Material and Indirect Labor and Factory Overhead on the 559 scales, Charges to Sales and Charge Backs. The remainder of the Account is the same and the profit is thereby reduced from $106,191.93 to $92,656.70.

"For the year 1911, the number of cylinder scales sold and the Charges to Sales and Charge Backs, both for the number of scales and amount, are taken from Mr. Slater's testimony. The
284 type numbers and the numbers of scales sold of each type are also taken from Mr. Slater's testimony, while the cost per scale is taken from Mr. Zolg's testimony and other witnesses. The amounts are mere calculations. The Factory Overhead and Indirect Labor divided by the figures for Labor and Material makes up the percentage figure of 80.17%. Mr. Zolg had a figure of 84% for this same proportion in his account. His figures were calculated on the basis of the last ten months of 1911, instead of for the entire year, but the same method of calculation was used. He made no allowance for Inventory Adjustment at the beginning of the year.

"The next item, 'Commissions to Agents,' $37.49 per scale, is the average commission calculated by Mr. Zolg in his account, ascertained by dividing the amount paid for Commissions by the number of scales reported sold. The figure for the total Commercial and Selling Overhead, is taken from page 3 of the yearly statement, Plaintiff's Exhibit No. 8, after adjustment has been made, and the Commissions to Agents, Bond Interest, and Interest eliminated from this Overhead Account, making the net Commercial and Selling Overhead, $406,626.99, of which sum, 60.40% is the proportion the cylinder sales bear to the total sales. I procured the total amount for cylinder scales sold from Mr. Slater's testimony and the total for new scales sold from the yearly statement, Plaintiff's Exhibit No. 8.

"The total of new scales sold in United States.....	$1,288,012.58
Plus the foreign scales sold.....	29,514.39
Making a total of.....	1,317,526.97
from which we should deduct the Toledo Scales Charge Backs	116,085.31
leaving for the total sales.....	$1,201,441.66

and of those, the cylinder scale sales amount to $725,671.39, the proportion of cylinder sales to the total sales being 60.40%. This account differs slightly from the preceding years for two reasons, the principal reason being that it is based on the Account Prepared by Defendant, to which I adhered as closely as possible, only
285 making such adjustments as were absolutely necessary to bring it into line with the books.

"The Losses on Agents' and Customers' Accounts, 3%, is the same average I have used each year, and the Depreciation on Buildings is the same amount furnished by Zolg in his statement. The Allowances for Exchange and Second Hand Scales, $99,047.24, and the Toledo Scale Allowances, $29,051.47, are taken from the yearly statement, Plaintiff's Exhibit No. 8 as are the Special Allowances. I also took the figure for Sales of Second Hand Scales, $18,466.79, and the item for Refinished Scales, Toledo, $700.00, and Refinished Exchange Scales, $75,653.56, from the same Exhibit No. 8. These items make a total of $94,820.35, deducted from the total Allowances for Exchange Scales of $150,194.94. We also made Allowance for Commissions to Agents, applicable to Second Hand Scales, figured as follows:

The total sales of new scales were.....	$1,201,441.66
And for cylinder scales sold.....	725,671.39
The difference of	475,770.27

being the residue applicable to fan scales and second hand scales.

"The Second Hand Sales were 16.62% of the combined sales of Exchanged Scales, to which I added 16.62% of the balance of the commission account of $182,161.80, giving a figure of $30,275.29 applicable as Commissions on Second Hand Sales. Adding our total of $58,219.20, Allowances on Second Hand Scales, and $30,275.29 Commission on Second Hand Scales, we get a total of $88,494.49, of which 60.40% is chargeable to cylinder Sales.

"Accordingly, our final item of expense becomes $629,991.96, $95,679.43, being profits of the business for the year 1911 on Basis No. 1.

"Now, on Basis No. 2 for this year, 1911, the differences are in the Charges to Sales and Charge Backs, 654 scales. We allow for the Labor and Material and Factory Overhead, but the remaining figures of the account remain the same, whereby the profit for the year is

reduced from $95,679.43, on Basis No. 1, to $77,786.96 on Basis No. 2.

"For the period of eight months ending August 31, 1912, the figures for number of scales sold, number of Charges to Sales,
286 and Charge Backs, and the value of those respective items are taken from Mr. Slater's testimony, as are the type numbers and the number of scales sold of each type. The cost per scale was taken from Mr. Zolg's testimony in the Account Furnished by Defendant. The overhead proportion of 72.7% of combined Labor and Material was arrived at from the yearly statement, Plaintiff's Exhibit No. 9. The figures for Direct Labor and Material, as well as for the Indirect Labor and Factory Expense were taken from this exhibit. The Commissions for Agents, $39.60 per scale was based on the Account Furnished by Mr. Zolg, and this figure gives the average commissions per scale by dividing the total number of scales sold into the total commissions paid—The figures for Commercial and Selling Overhead, and the Commissions to Agents, Bond Interest, and Interest, were also taken from the yearly statement, Plaintiff's Exhibit, No. 9, and the percentage was arrived at in the same way detailed in connection with the account furnished for the year ending December 31, 1911. The Losses on Customers' Accounts and Depreciation on Buildings were taken from Mr. Zolg's testimony and the Account Furnished by Defendant. The Allowances for Exchange and Second Hand Scales, as well as the Toledo Scale Allowances and Special Allowances for Marring, Special Allowances, Miscellaneous, are all taken from the same Exhibit No. 9, as are the figures for Refinished Toledo Scales, Refinished Competition Scales, and Charge Backs, Second Hand Scales. I made an additional allowance for bad debts in that item. On the Basis No. 1, the profits for the eight months of this year, 1912, amount to $73,766.95.

"On Basis No. 2, for the eight months ending August 31, 1912, the differences are figured in exactly the same way as I have described in connection with earlier years of my account and the profit on Basis No. 2 figures out, $63,752.42.

"I have also supplied a Basis No. 3, which is similar to Basis No. 1, after adjustment is made of the Experimental, Development and Organization charges, applying a proportion of same to operations subsequent to August 31, 1912. For example, in the year 1906 we went back to the commencement in the case of Experimental,
287 beginning, I believe, in the year 1902, we have regarded all experimental charges as applying to five years subsequent and not directly against the year 1902, in which the charges were made. I have accordingly applied one-fifth to 1902, and one-fifth to each of the four following years. The year 1903 then carried one-fifth of 1902, one-fifth of its own expense of 1903, and projected four-fifths forward. Thus the year 1904 carried one-fifth of the Experimental expenses of the year 1902, one-fifth of those of 1903, one-fifth of its own expense, 1904, and four-fifths of the 1904 expenses were projected forward and so forth with each of the succeeding years up to 1912. The benefit of that expense does not accrue in the year in

which it is incurred, but in a number of years succeeding. The Organization Charges were similarly distributed over a period of five years, and not charged as an immediate expense in the one year in which they were incurred, and the Development Expense was distributed in the same manner. The figures for the Experimental Account I found in the various yearly statements, Plaintiff's Exhibits, Nos. 8-15. For the Organization Charges I have taken the expense of opening up and developing various offices organized by the company—that is developing the business. I did not regard it as possible to separate the organization and the developing expenses of the various offices and everything applying to the building up of the business, the benefits of which accrued at a later date. Thus the items of Advertising, Litigation and Patent Expense are included in addition to the Experimental Expense. I regard the distribution of these accounts over a five-year period as being very reasonable. It is sometimes done on the basis of ten years but five years is more or less favorable to the accounting defendant.

"Basis No. 4 is similar to my Basis No. 2 with this deferring of charges explained in connection with Basis No. 3.

"On the second page of the summary, (this page being marked at the top, 'Toledo Computing Scale Company, Summary of Profits on Manufacture and Sale of Cylinder Scales from January 1, 1906 to August 31, 1912'.) I show the profit for each year under Basis No. 1, 2, 3 and 4. The profits are taken from the accounts
288 that I have already testified to. The figures under Basis No. 1 represent the profit on the manufacture and sale of cylinder scales before chargeing interest, and the total for the period is $459,206.77. That is for the sale of cylinder scales in the United States. On Basis No. 2 I have put the figures of profit for each of the years 1906 to 1912, and the total on the basis is $404,629.48. Basis No. 3 is the same as Basis No. 1, after the adjustment carrying forward the Experimental, Development and Organization Charges, and the profits are set opposite the respective years in the columns under Basis No. 3.

"Basis No. 4 is the same as Basis No. 2 with the projection forward of the Experimental, Development and Organization Expenses, and the profits per year are set down under the column marked Basis No. 4.

"On the page before the last one I have testified to, the second summary represents a statement of profit on manufacture and sale of cylinder scales reduced to a per-scales basis on net sales. I arrived at this by dividing the profits ascertained by the net number of cylinder scales sold.

"The next item is Inventory of Completed Scales, at Average Profit per Scale. I took the number of scales, 1839, mentioned in the Account Furnished by Defendant as the Scales on Hand at the end of the accounting period. The average profit on Basis No. 1 is $22.05, as shown on the next page of this summary, and I multiplied this average profit by 1839 scales to get the profit on those scales on hand. Similarly, I applied these 1839 scales on hand to the profits developed under the other bases, 2, 3, and 4.

"The next figures which I have set forth are for Canada, and these are taken on one basis only. The figure of Canadian profits is profits is pro rated, the same proportion of profit being given to the cylinder business as to the entire business. The Canadian Accounts are set forth in the various yearly statements, Plaintiff's Exhibits, 8 to 15, and give the total Canadian sales and the total profits in Canada for each year. I obtained the cylinder sales from Mr. Slater's testimony, and calculated the proportion of cylinder sales to total sales, and applied that percentage to the entire profits in
289 Canada, thus getting the figure of profits applicable to Canadian cylinder sales. The total sales in Canada for the year 1908 were $15,262.50. That is shown on page 3 of the yearly statement for this year, 1908. The total sales for the

Year ending December 31, 1909 were	$77,667.41
Year ending December 31, 1910 were	107,911.92
Year ending December 31, 1911 were	149,644.23
Eight months ending August 31, 1912 were	108,960.00

I obtained the total cylinder sales from the testimony of Mr. Slater, and worked out the percentage which one figure bears to the other. The Total for cylinder sales in 1908, $10,610.00, is 69.52% of the total sales of $15,262.50 for this year. The total profits for Canadian business are taken from the same yearly statements, Plaintiff's Exhibits, 8 to 15, and the cylinder profits are ascertained by applying the same percentage as the cylinder sales bear to the total sales for each year. The figure, $58,141.24 represents the total profits for the whole period, and that total profit is put in Bases No. 1, 2, 3, and 4.

"In the final summary, Statement of Profits, no notice is taken of manufactured parts on hand, or of scales and parts in course of manufacture at the period when the accounting ends, except in so far as I took notice of the 1839 completed scales testified to by Mr. Zolg as being on hand. The same applies to the Canadian business. We have no record at all of any inventory in Canada of either parts or scales.

"In Basis No. 3 I have distributed the following accounts Experimental. I got the figures for the distribution entering into the 1906 account from the books of the Toledo Company, and the figures here used were taken off those books by Mr. Slater."

Then testimony as follows:

Mr. Meads: Well, I object to the witness reading from any document or memorandum unless it is one that he himself made.

The Master: Was that made under your direction, taken from the books of the defendant company?

A. Taken from the statement submitted, those exhibits I have been testifying to were made under my direction.

290 Mr. Meads: In other words, a compilation made from exhibits and he wants to read to your Honor.

Mr. Zane: What I am trying to get at is this:

Q. Entering into the year 1906, is there a distribution of any accounts prior to 1906?

A. Yes.

Q. Where did you get the figures for the distribution entering into 1906 that are prior to 1906, where did you get those figures?

A. From the books.

Q. What books?

A. From the books of the company, from the books of the Toledo Computing Scale Company.

Q. Yes, and those are its books of account there at Toledo?

A. Yes.

Q. And the figures which you have here were taken off of those books?

A. Yes, sir.

Mr. Zane: That's all.

Mr. Meads: By yourself?

The Master: By yourself?

A. No, by Mr. Slater.

Mr. Meads: Well, then, he is the witness.

Mr. Zane: We will have first this witness testify as to the figures and then we will put Mr. Slater on the stand and have his testimony.

Mr. Meads: I object to this witness testifying to something somebody else has done.

The Master: This is simply putting into the record the result of the work done by the accountant under Mr. Hall's direction.

Mr. Zane: That's all.

The Master: If the objection is made, proof will have to be made that these figures are correct. That may be done later, however, if counsel states that he expects to do that.

Mr. Meads: Well, for the purposes of the record, I shall have to renew my objection to this witness reading a typewritten compilation of figures which he says was made by somebody else, and as he says, in a general way taken from the books of the company.

291 The Master: On the statement that he will hereafter prove by Mr. Slater who made the figures that they were taken from the books of the defendant company and are true and correct, I will overrule the objection.

Mr. Zane:

Q. Now, you are not reading anything from typewritten figures of Mr. Slater, you are reading from written figures?

A. From written figures.

Q. Yes, from written figures.

Mr. Meads: In whose handwriting is the thing from which you are reading?

A. Mr. Slater's.

Mr. Zane:

Q. Did you have anything to do with getting together those figures and putting them down?

A. Yes, sir, they were put down there under my supervision.

Mr. Meads: I wish the record to show that Mr. Slater is present in the court room at the left-hand of counsel.

"I examined these books of the Toledo Company in a general way. I took the Experimental Account, beginning in the year 1903, the Advertising Account commencing in 1902, the Litigation in 1905, the Patent Expense in 1905, Chicago Office Expense in 1902, New York Office Expense in 1903, St. Louis, San Francisco Minneapolis, Pittsburgh and Buffalo Office Expense in 1904; in 1906 Boston, Kansas City, and an account, 'Other Branch Office Expenses;' in 1907, Philadelphia; in 1910, Dayton, Detroit, Omaha, Cleveland, Los Angeles, Denver, Seattle, Milwaukee, Indianapolis, Cincinnati and New Orleans; in 1912 we added Dallas, Albany and Spokane. These were all the accounts that were distributed and they were distributed on the basis to which I have previously testified. Beginning with the year 1906, the figures used were taken from the yearly statements supplied by the Toledo Company, and prior to the year 1906, I cannot state of my own knowledge that these figures were correctly taken from the Toledo Company's Books. Assuming that the figures were correctly taken I can state that the calculation which you have before you, of these amounts are correctly distributed through the succeeding years on the basis testified to as Basis No. 3."

(Counsel for Plaintiff then offered the two sheets from which the witness was reading, and had them marked for identifi-
292 cation, Plaintiff's Exhibit, 39, Sheets 1 and 2.)

"Referring to the figures taken for Scales on Hand, I have no way of accounting for the discrepancy between the number of scales shipped as compared with the number of scales that were actually sold, as shown by the books. No account has been taken of parts on hand, infringing parts manufactured and on hand at the end of the accounting period. No general expense has been applied against the Vulcanizing Department. We have simply set that aside and not charged it with any proportion of the expenses of operating the business, yet this vulcanizing business was carried on as a part of the entire business.

Then there is the element of number of scale transactions. The fan scales had a relation of 3 to 5, or 2 to 1 to the cylinder scales, and some item of expense might more reasonably be applied on that basis rather than on the basis of dollar to dollar.

There is a further item that might enter into consideration and be deferred. That is the loss in the second hand business and in taking exchange scales, especially competitive scales that have been rebuilt at a considerable loss. There is a question as to whether those sales should not be regarded as part of the expense of developing the

business rather than an actual loss on the business operation. I did not consider it a development expense. I took it as a straight loss and expense in that particular year. No allowance was made for the value of orders on hand at the end of the accounting period. There is a value in these orders on hand, but it is impossible to determine how much, so that we disregarded the item. Then, in the question of Canadian business, nothing has been allowed for the development of that particular business. We have taken all the expenses shown on their books at face value, without attempting to discriminate between them.

"On neither Basis No. 1, nor Basis No. 2, has the plaintiff company received any credit or allowance for the business developed in computing scales through the appropriation of the plaintiff company's patent. On Basis No. 3 there would be an allowance in round figures of $135,000, as compared to Basis No. 1, and on Basis No.
293 4, an allowance of about $135,600 over Basis No. 2, and that is made by distributing the charges over the succeeding years. If Basis No. 3 or Basis No. 4 were used, the plaintiff company would get some allowance for a business in cylinder scales that was built up by infringing their patent."

Q. You consider the business in computing scales which the Toledo Company has at the date of the expiration of the patent as a valuable asset, do you?

Mr. Meads: I object to that form of the question. He has not shown any foundation.

Mr. Zane: I thought we had.

The Master: The question is leading anyway. I will sustain the objection.

Mr. Zane:

Q. Well, have you anything to say pro or con as to the propriety in these accounts of making an allowance for any development of business in cylinder scales at the date of the expiration of the patent?

Mr. Meads: Well, I object, your Honor please, the witness has not testified he has any familiarity with the computing scale business other than what has been shown here.

Mr. Zane: That's a general business.

The Master: But if he has any knowledge from the accountant's point of view, I will permit him to answer.

A. There is certainly a value in this cylinder scale at August 31, 1912. The business was built up out of expense and nothing has been charged in any of the accounts for the development of the business, the building up of the business, it had all been charged as an expense. It was an exceedingly profitable business and there was a value in it at August 31, 1912.

Mr. Meads: I move to strike out the answer of the witness as not being an answer technically from an accountant's point of view.

Mr. Zane: It certainly is.

The Master: Motion denied.

"In his testimony Mr. Zolg stated with regard to these exhibits, that all of the Agents' Balances carried there were actual losses and that in order to arrive at the profit in any particular year you would have to deduct the Agents' Balances, in order to arrive
294 at a correct figure. In the statement for 1911, for instance, we have on page 1

Agents' Debit Balances	$147,247.10
Less reserve of	22,687.09
Making a net balance of	$124,560.01

This is carried as an asset, while on page 2 of the same statement we have Agents' Credit Balances $30,437.71, carried as a liability, and a further liability of Prospective Commissions of $66,919.04."

Then testimony as follows:

Q. Now, Mr. Zolg was asked in regard to a figure of agents' debit balances carried as an asset this question, or made this answer: "It represents commissions paid to salesmen and later charge backs, overdrafts on their accounts, special advances and debits, for which they have no commission credits to offset.

Q. Is that an actual loss to the company?

A. Absolutely an actual loss to the company. There is no value to it whatever."

Now, is that statement true on those books?

A. I would not regard it as being a true statement.

Mr. Meads: I move to strike out the answer. The question was is that statement true on those books. His answer was "I would not regard it as a true statement."

Mr. Zane: The question was is that statement true on those books.

Mr. Meads: And I move to strike out his answer.

The Master: I don't quite get your point.

(Discussion.)

The Master (to the witness): Do you mean according to the *the* books not true?

A. That is rather hard to answer it that way, but that is not a truthful statement because——

Mr. Meads: That's it exactly. He is not speaking as an accountant.

A. I am speaking as an accountant, because these agents' prospective commissions should be applied against those debit balances, and the contention that the debit balances are all bad is obviously

295 wrong when you find there are agents' credit balances. Now, all agents begin with a debit balance representing advances to enable them to establish their business and their connection. These men to the extent of $30,000 have changed that debit to credit and there is equal prospect of these debit men coming over to the credit, and as a general matter of business you won't find agents' debit balances being written off that way. When a man finances his agents he don't expect to make a loss, he is financing it as a convenience to his own business.

Mr. Meads: I move to strike out the statement of the witness.

Mr. Zane: He is testifying as an accountant.

The Master: I think the answer is competent. I will deny the motion. Go ahead and explain what you understand the proper method of treating that kind of item is.

A. When you engage an agent you have to finance him, and as a rule they are not very well off, until they establish their connection, their business. All these advances are repaid out of future commissions and obviously there is no business man who is going to finance an agent and lose the entire advance. All those agents, or a large majority of them, work back into credit balances later. And the very fact that men have obviously worked from a debit balance over to a credit balance, a number of them, and have $66,919 prospective commissions coming to them would indicate that every debit balance is not bad, but should be off-set against that.

The Master: Would not that depend largely upon whether the agent was still with the company and whether he might in the future change back from a debit to a credit balance?

A. Exactly.

Mr. Meads: In other words, the witness has got to assume that these agents' debit balances are from the same people that the prospective credits are in order for the one to offset the other, but it is very obvious to the court that those debit balances represent, as they do in most cases, debits to agents who have quit. Counsel knows that there can be no such thing as a wiping off and this man is merely guessing as to what might happen and not stating what the books of this company show except he is stating the general business experience as applied to these accounts.

296 Mr. Zane:

Q. What is the reserve there established for?

A. This reserve of $22,687 is established to take care of any possible losses on liquidation of those accounts.

Q. And what is that reserve he has got established?

A. $22,687.09, about one-seventh of the total debit balances.

Q. And how does he get that reserve, the money to go into that reserve; where does he get it?

A. From his profits.

Q. Takes it out of his profits for a prospective loss on those accounts?

A. Takes it out of his profits for a prospective loss on those accounts at the end of each year. It is quite obvious that at the end of the year he readjusts his reserve. He takes an inventory of his stock on hand, his goods on consignment, readjusts his reserve and establishes his profits. Now, there was a case of one account I recall in looking up down in Toledo, a very large balance, where the man began with a debit, worked back to a credit, went back to a debit and then back to a credit. That was one particular case where there was a very large balance. If you took that man at the present time, his real debit, you could not honestly say you had lost the money because he has worked back until you had to pay him something and worked back to a loss again and then back to a credit.

Mr. Zane:

Q. Have you treated the agents' debit balances exactly as Mr. Zolg treated them in making up his statement of 1911?

A. Yes.

Q. He carried them as an asset?

A. Yes, and I have taken them, in all these statements submitted by the company these debit balances have been treated as an asset. I have regarded them as such.

Q. And did the company treat it as an asset and carry it as an asset?

A. Yes, sir.

Mr. Meads: I object to that, whether the company treated it as an asset. The statements speak for themselves.

297 The Master: Well, he is speaking of how the books show that the company treated them.

Mr. Zane: Yes.

The Master: He is only speaking from the books.

Mr. Zane:

Q. Now, in the company's statement of its profits did it take those agents' debit balances as an asset? I mean on this exhibit.

A. On this exhibit, yes, always.

Q. And they also treated them as an asset in making up their income return of profits to the Government on which they paid taxes?

A. I presume so.

Mr. Meads: I move to strike out his answer.

Mr. Zane:

Q. Look at the figures.

The Master: I suppose they speak for themselves, don't they, and they are in evidence.

Mr. Zane: They are in evidence, yes. I think they do, I think your Honor is right about it.

WILLIAM SLATER, recalled as a witness on behalf of plaintiff, testified as follows:

Direct examination.

Mr. Zane:

"I am the same William Slater who testified in this case. I made up the figures for the two sheets which have been marked for identification, Plaintiff's Exhibit 39. The figures prior to 1906 were taken from the ledger of the Toledo Company. I obtained them myself and put them down there, and to my knowledge I did it correctly. I took an extract from the ledger, and these figures I took from those extracts. I also made the calculations of dividing up the account into five parts, carrying over to the four succeeding years four-fifths of the amounts. I made these calculations upon this sheet, and I made them correctly. This work was done under Mr. Sall's supervision. The figures of 1906 and subsequent years were taken from the yearly statements, which are Plaintiff's Exhibits 8 to 15 in the case, and they are correct.

Then testimony as follows:

Mr. Zane: We now offer that in evidence.

298 Mr. Meads: To this offer I want to note an objection. To the instrument offered in evidence defendant objects as the witness has testified that the figures in question are taken from extracts which he took from the books of the Toledo Company, and the instrument is not the best evidence of the fact sought to be proven.

The Master: Objection overruled. You can put any further evidence in if you wish to.

Mr. Zane: We can call for the ledger if we thought it desirable, but I don't consider it so as a matter of evidence.

The Master: I think it is competent.

(Said two sheets heretofore marked for identification Plaintiff's Exhibit 39, sheets 1 and 2 respectively, so offered, received in evidence and marked "Admitted."

Mr. Meads: We certainly should have ample opportunity to do the comparing, your Honor, on this new matter. This has never been suggested until to day, this period of spreading.

The Master: Well, you certainly should have time before you are called upon to answer.

Mr. Zane: That's the reason I offer this in evidence, is for them to see how it is spread, they can see it.

JAMES HALL, a witness recalled on behalf of plaintiff, testified as follows:

Direct examination (continued).

By Mr. Zane:

"In the papers submitted by me of statements of profits of cylinder scales, I carried the figures shown in Plaintiff's Exhibit 39 into

these statements on Bases Nos. 3 and 4. At the end of the accounting period, no note was taken of any inventory of second hand scales, or exchange scales at August 31, 1912. I cannot say whether there was an inventory of second hand scales or exchange scales then, or near that time, but they did have inventories at the close of any period, and so presumably they had one at the close of August 31, 1912, but the amount is unknown, at least to me. At December 31, 1911, they had one, and presumably they had one here, but I don't know the amount. At any rate, whatever it was, it has not
299 been included in these accounts.

Then testimony as follows:

Mr. Zane: Now, this book I want to have marked for identification as Plaintiff's Exhibit 40.

(Said book marked for identification Plaintiff's Exhibit 40, June 26, 1916, C. B. M., Master.)

Let the record show that a copy of this has been supplied to the defendant on this date.

Now, we offer this book, Plaintiff's Exhibit 40, in evidence.

Mr. Meads: To which the defendant objects, first, that the instrument is not authenticated; second, that it is largely hearsay; third, that it is secondary evidence in all of its particulars; and, fourth, that it is incompetent, irrelevant and immaterial.

The Matser: How about the authentication of the figures that appear under Bases 1 and 2?

Mr. Zane: Well, I showed where the figure came from in each instance. It came off their books and statements, every figure in there has been testified to as taken either from Mr. Slater's figures which are already in evidence or from these statements which are in evidence. There is nothing here that the witness has testified to or used as a figure that is not in proven testimony in the case under oath.

Mr. Meads: Why, the witness himself, if the Master please, said that these figures in many instances were substantially the same subject to some objections and calculations, and in one instance he gave the amount of eighteen thousand and some odd dollars.

Mr. Zane: Well, as to that, I have asked them to prepare over night and we will offer in the morning any figure that varies from these statements and how it is and why it varies from it.

Mr. Meads: That does not make it competent now. Mr Zane: Well, it is subject to that, but I think it is competent without that.

The Master: Objection overruled.

(Said book, heretofore marked for identifiaction Plaintiff's Exhibit No. 40, so offered, received in evidence and marked
300 "Admitted.")

"I have made some changes in the figures in my statement embodied in Exhibit 40 as follows:

"In the year ending 1908 no changes were made. In the year 1907, an item of 2,457.11 was added to the Indirect Labor and Fac-

tory Expense, as shown on Plaintiff's Exhibit No. 13, making the total Indirect Labor and Factory Expense, $55,475.80, instead of $53,018.69, as shown on Exhibit 13. In the year ending 1908, an item of $2,058.47 of Deprecation was added to the total Indirect Labor and Factory Expense, set forth in the Exhibit No. 12. The total Indirect Labor and Factory Expense was $61,168.76, instead of $59,110.29. In the year 1909, an item of $4,118.59 was taken from the Material Account stated in Plaintiff's Exhibit No. 11, bringing the corrected figure from $94,001.06 to $89,882.47. In the Indirect Labor and Factory Expense, deductions of $14,309.84 were taken from the total Indirect Labor and Factory Expense of $89,442.71, making the corrected figure $75,132.87. These deductions of $14,309.84 were made up as follows:

Credits.

Tools and Patterns	$9,735.16
Factory supplies	3,410.45
Lumber	317.92
Chart stones	6,371.39
Office furniture and fixtures	577.97
Kitchen equipment	7.50

Charges.

Packing crates	$280.16
Power, heat and light	35.40
Horse and wagon account	94.25
Sample cases	871.80
Machinery	1,116.53
Factory equipment	3,662.41
These charges taken from the credits make up the figure of	$14,309.84

"The explanation of these adjustments is that the statement, Plaintiff's Exhibit No. 11, was prepared before the adjustment of the final inventories, shown on the books, and the adjustments are made to bring the statement into line with the books of the company.

"To the Commercial and Selling Overhead of $727,675.55 set forth in Plaintiff's Exhibit No. 11, I have added the items of

301	Stationery and office supplies	$691.54
	Item of advertising	3.95
making an adjusted total of		$728,371.04

These adjustments were made to bring the statement into line with the books.

"In the year ending December 31, 1910, from the item of 'Direct Labor' stated at $96,442.27, in the yearly statement. Plaintiff's Exhibit No. 10, I deducted $1,322.14, making the corrected figure of $95,120.13. This was done to bring the statement into accordance with the books, as this statement was prepared before the final adjustments had been entered. Similarly, the Material account of

$103,916.15, on the Exhibit, was increased to $112,514.11 by an addition of $8,598.06.

"The Indirect Labor and Factory Expense, was decreased from $137,695.34 to $130,711.47, a difference of $6,983.87. This was done to bring the statement into accord with the books. This deduction was made up of the following items:

Credits.

Tools and patterns	$2,914.72
Factory supplies	3,491.82
Power, heat and light	207.38
Packing and shipping	850.21
Lumber	11.42
Machinery	715.25

Charges.

Maintenance, repairs and alterations	$886.52
Office furniture and fixtures	320.41
Taking the charges from the credits, leaves	6,983.87

"The Commercial and Selling Overhead was increased from $798,371.52 to $802,331.96, by additional items of:

Advertising	$465.27
Kitchen	26.69
Office supplies	101.19
Accrued taxes	100.45
Accrued wages	3,266.84

These two items of Accrued Taxes and Accrued Wages were charged by the company direct to its Surplus account. I transferred them from the Surplus account to the Profit and Loss account, as that is where they belong.

The Agents' Commissions, $410,267.62, consisted of the
302 item of Agents' Commissions, $384,210.55, and District Managers' Commissions, $26,057.07.

"In the year ending December 31, 1911, the following changes were made: The Material Account was increased from the $74,171.30, shown on the yearly statement, Plaintiff's Exhibit, No. 8, to $83,618.32, $9,447.02 being added. The Indirect Labor and Factory Expense was increased from $131,767.98, on the Exhibit, to $131,948.35, an increase of $180.37, made up as follows:

Credits.

Factory supplies	$1,033.12
Manufacturing expense	215.33
Packing and shipping	772.23
Maintenance, repairs and alterations	420.94
Lumber	115.38
Trucking	274.00
Repair Department	233.00

Charges.

Tools and Patterns	$2,790.88
Power, heat and light	92.75
The credits taken from the charges make a difference of	$180.37

"The commercial and Selling Overhead has been increased from $791,481.96 to $792,487.44 by the following items:

Insurance	$440.90
Excise tax of 1910	930.07

That was charged by the company to Undivided Profits and transferred by me to Profit and Loss. The two charges are subject to deductions of the following credits:

Stationery and office supplies	$298.34
Kitchen account	59.56
San Francisco account	7.59

The credits taken from the charges make up the difference.

"The Agents' Commissions consisted of Agents' Commissions, $351,006.87 and District Managers' Commissions, $6,420.68, a total of $357,427.55.

"The only change in the year 1912 is the adding together of Agents' Commissions, $240,884.27, and the District Managers' Commissions of $10,328.91, making a total of $251,213.18.

"Referring again to the year ending December 31, 1907, addition of $2,457.11 to the Indirect Labor and Factory Expense in-
303 creased the expense. The items making up the $2,457.11, consisting of deductions for depreciation of machinery, $1,528.34, office fixtures, $302.90, agency office fixtures, $60, sample cases, $306.88, horses and wagon, $259.99, are proper charges applying to the operation of the business. They were not included under the head of 'Indirect Labor and Expense.' Accordingly, I transferred them.

"Referring again to the year ending December 31, 1908, the item $2,058.47 was in respect to the decrease in the value of machinery made apparently on appraisal, called in Exhibit 12 'Depreciation Machinery Appraised, $2,058.47.' There might be a question as to the fairness of putting that item in the expense of this year, if it is an appraisal and the depreciation would probably accrue over a period of years, but I charged it against operation of the business as an additional expense. Referring again to the year ending December 31, 1909, the item of $4,118.59 was taken from the Material Account. It is not quite apparent now just why that was taken out, but I should judge, by the nature of the item, that it was an adjustment on the inventory, by the application of the inventory at the close of the year which would naturally have the effect of reducing the material used during that year, and this adjustment of inventory had not been made in the Plaintiff's Exhibit No. 11. The deductions from

the Indirect Labor and Factory Expenses for this year, 1909, were adjusted on the inventory, and the items of Stationery, Supplies and Advertising I have added to the Commercial and Selling Overhead for the year 1909 were not shown on the statement but were shown on the books. This statement is a preliminary statement and apparently was drawn off before the final entries were made by the company. All of these changes that I have made were necessary to bring the yearly statements into line with the final entries on the books.

"Now, comparing Basis No. 3 with Basis No. 1, I have stated that Basis No. 3 is similar to Basis No. 1, with certain expenses distr uted over five years instead of one year. The number of scales sold are the same in both cases. The deductions of "Charges to Sales" are the same and the net number of scales sold and the net amounts received are the same in both bases. The cost of Labor and
304 Material per scale in both bases and Overhead Expense of combined Labor and Material differ in that the percentage is decreased. This percentage is 43.73% as compared to 49.42% on Basis No. 1. The cause of this decrease is in the adjustment of the item Experimental Expense. The company had charges in respect to this Experimental Expense that went into the Factory Indirect Labor Overhead. I have distributed these charges to future years, thereby reducing the amount that applies in this year.

"The Commissions to Agents are the same in both bases. The Commercial and Selling Overhead, however, is reduced in Basis No. 3. The differences there lie in the items of Advertising, Litigation, Patent Expense, and expense of the various Branch Offices which have been distributed over future years.

"The item Losses on Agents' and Customers,' and 'Allowances for Exchange Scales,' are the same in both bases. The same answer as to the comparison of different items would apply in each year throughout the Accounting period.

Mr. Zane: Now, if the court please, I offer in evidence the paper which has heretofore been marked Plaintiff's Exhibit No. 7 for identification, December 13, 1915, C. B. M.

Mr. Meads: The defendant objects to the introduction of the instrument as being irrelevant and immaterial.

Mr. Zane: It was used on the cross examination of their witness who was testifying about the different scales and the different prices.

Mr. Meads: You might have used a newspaper, but that would not make it competent.

Mr. Zane: He has made it competent by stating what it was.

The Master: Objection overruled.

(Said price list, heretofore marked for identification Plaintiff's Exhibit No. 7, so offered, received in evidence and marked "Admitted June 27, 1916.")

Mr. Zane: Now, we offer in evidence the pages of the price list of Toledo Computing Scales taking effect February 15, 1909, which have been marked respectively Plaintiff's Exhibit No. 2, Plaintiff's

Exhibit No. 3, Plaintiff's Exhibit No. 4, Plaintiff's No. 5 and Plaintiff's Exhibit No. 6, all for identification; and we also offer
305 from this same catalog the pages which I will ask the reporter to mark as Exhibits 41 and 42.

(Said pages marked for identification Plaintiff's Exhibits 41 and 42 respectively, June 27, 1916, C. B. M., Master.)

Mr. Meads: To which offer the defendant objects on the ground that the instrument and the various exhibits sought to be introduced are incompetent, irrelevant and immaterial.

The Master: Objection overruled.

(Said pages, heretofore marked for identification Plaintiff's Exhibits 2, 3, 4, 5, 6, 41 and 42 respectively, so offered, received in evidence and marked "Admitted June 27, 1916.")

(Said exhibits are in the words and figures following:

PLAINTIFF'S EXHIBIT NO. 2.

	Blue finish.	Gold finish.
(*a*) No. 346	$140.00	$155.00

Capacity 24 pounds.
Cylinder chart.
Without tare beam.
Ornamental brass trimmings.
Removable dash-pot.
Lock-nut leveling screws.
Mechanism handsomely finished and visible to both customer and merchant through large glass-covered openings in housing.
Housing practically dust-proof.
Platter (oval plate glass).

Prices per pound as follows:

4, 5, 6, 7½, 8, 8½, 9, 9½, 10, 11, 12, 12½, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 30, 35.

Money values on the chart are shown by figures for every cent at prices per pound from 4c. to 9c. inclusive, and by figures for every other cent with a line graduation for intermediate cents at prices per pound from 9½c. to 19c. inclusive. From 20c. to 35c. per pound inclusive every 5c. in value is shown by a figure, line graduations representing intermediate cents.

306 PLAINTIFF'S EXHIBIT NO. 3.

	Blue finish.	Gold finish.
(*a*) No. 347	$140.00	$155.00

Capacity 20 pounds.
Cylinder chart.
Without tare beam.
Ornamental brass trimmings.
Removable dash-pot.
Lock-nut leveling screws.
Mechanism handsomely finished and visible to both customer and merchant through large glass-covered openings in housing.
Housing practically dust-proof.
Platter (oval plate glass.)

Prices per pound as follows:

5, 6, 7, 8, 9, 10, 11, 12, 12½, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35.

Money values on chart are shown by figures for every cent at prices per pound from 5c. to 17c. inclusive, and by figures for every other cent with a line graduation for intermediate cents at prices per pound from 18c. to 35c. inclusive.

PLAINTIFF'S EXHIBIT No. 4.

	Blue finish.	Gold finish.
(a) No. 348	$140.00	$155.00

Capacity 15 pounds.
Cylinder chart.
Without tare beam.
Ornamental brass trimmings.
Removable dash-pot.
Lock-nut leveling screws.
Mechanism handsomely finished and visible to both customer and merchant through large glass-covered openings in housing.
Housing practically dust-proof.
307 Platter (oval plate glass).
Prices per pound as follows:

10, 11, 12, 12½, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40.

Money values on chart are shown by figures for every cent at prices per pound from 10c. to 20c. inclusive, and by figures for every other cent with line graduations for intermediate cents at prices per pound from 21c. to 40c. inclusive.

PLAINTIFF'S EXIBIT No. 5.

	Blue finish.	Gold finish.
(a) No. 349	$140.00	$155.00

Automatic gross Weight, Net Weight and Tare Weight Scale.
Capacity 30 pounds.
Cylinder chart.

Ornamental brass trimmings.
Removable dash-pot.
Lock-nut leveling screws.
Mechanism handsomely finished, exposed to view through glass-covered openings.
Housing practically dust-proof.
Platter (oval plate glass).

Tare weights as follows:

3 lbs., 3 lbs. 2 oz., 3 lbs. 4 oz., 3 lbs. 6 oz., 3 lbs. 8 oz., 3 lbs. 10 oz., 3 lbs. 12 oz., 3 lbs. 14 oz., 3 lbs. 15 oz., 4 lbs., 4 lbs. 2 oz., 4 lbs. 4 oz., 4 lbs. 6 oz., 4 lbs. 7 oz., 4 lbs. 8 oz., 4 lbs. 9 oz., 4 lbs. 10 oz., 4 lbs. 11 oz., 4 lbs. 12 oz., 4 lbs. 14 oz., 5 lbs., 5 lbs. 2 oz., 5 lbs. 4 oz., 5 lbs. 6 oz., 5 lbs. 8 oz. Gross weight and net weight chart graduated to ounces.

PLAINTIFF'S EXHIBIT No. 6.

	Blue finish.	Gold finish.
(a) No. 350	$140.00	$155.00

308 Automatic Gross Weight, Net Weight and Tare Weight Scale.
Capacity 50 pounds.
Cylinder chart.
Ornamental brass trimmings.
Removable dash-pot.
Lock-nut leveling screws.
Mechanism handsomely finished, exposed to view through glass-covered openings.
Housing practically dust-proof.
Platter (oval plate glass).

Tare weights as follows:

5 lbs., 5 lbs. 4 oz., 5 lbs. 8 oz., 5 lbs. 12 oz., 6 lbs. 6 lbs. 4 oz., 6 lbs. 8 oz., 6 lbs. 12 oz., 7 lbs., 7 lbs. 4 oz., 7 lbs. 8 oz., 7 lbs. 12 oz., 8 lbs., 8 lbs. 4 oz., 8 lbs. 12 oz., 9 lbs., 9 lbs. 4 oz., 9 lbs. 8 oz., 9 lbs. 12 oz., 10 lbs., 10 lbs. 4 oz., 10 lbs. 8 oz., 10 lbs. 12 oz., 11 lbs.
Gross weight and net weight chart graduated to ounces.

PLAINTIFF'S EXHIBIT No. 41.

	Blue finish.	Gold finish.
(c) No. 81	$100.00	$115.00

Capacity 20 pounds.
Cylinder chart.
Without tare beam.
Nickel trimmings.
Lock-nut leveling screws.
Platter (oval Opaque glass).

Prices per pound as follows:

4, 5, 6, 7, 7½, 8, 8½, 9, 9½, 10, 11, 12, 12½, 13, 14, 16, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 30, 32.

Money values on the chart are shown by figures for every cent at prices per pound from 4c. to 16c. inclusive, and by figures for every other cent with a line graduation for intermediate cents at prices per lb. from 17c. to 32c. inclusive.

309 PLAINTIFF'S EXHIBIT No. 42.

	Blue finish.	Gold finish.
(c) No. 82	$100.00	$115.00

Capacity 20 pounds.
Cylinder chart.
Without tare beam.
Nickel trimmings.
Lock-nut leveling screws.
Platter (oval opague glass).

Prices per pound as follows:

5, 6, 7, 8, 9, 10, 11, 12, 12½, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 32, 31, 33, 34, 35.

Money values on chart are shown by figures for every cent at prices per pound from 5c. to 17c. inclusive, and by figures for every other cent with a line graduation for intermediate cents at prices per pound from 18c. to 35c. inclusive.

Mr. Meads: Of course, in that connection I wish to say the real question is what they did sell them for, not what they proposed to sell them for, and the best evidence of that, of course, is the books of the company.

Mr. Zane: We desire to offer in evidence the pink sheet heretofore marked for identification Plaintiff's Exhibit No. 1.

(Loose leaf heretofore marked for identification Plaintiff's Exhibit No. 1, so offered, received in evidence and marked "Admitted.")

Whereupon an adjournment was taken to Thursday, 1916, at 10 o'clock A. M.

Chicago, June 29, 1916.

Met pursuant to adjournment.

Present:

Messrs. Meads & Hibben, for Defendant.
Messrs Zane & Morse, for Plaintiff.

310 WILLIAM SLATER, a witness, recalled on behalf of plaintiff, testified as follows:

Cross-examination.

By Mr. Meads:

"I have been in the employ of Marwick, Mitchell, Peat & Co. about two and one half years, in the City of Chicago. Before that time I was in England connected with the firm of Monkhouse, Goddard & Co., chartered accountants, at Newcastle-on-Tyne, and in London. I was with this firm about ten years. Ahead of this I was with the firm of Travor, Murgatroved, Shuttleworth & Halworth, chartered accountants, Manchester, and was working with them for about a year and a half. I am 39 years of age.

"When I first visited the Toledo Scale Company, in company with Mr. Hall, I was introduced to Mr. Kelly, the assistant to the president, Mr. Theobald. This was in March, 1915. I had previously had no conversation with the attorneys for plaintiff, but had discussed the case with Mr. Hall. I don't remember just what the conversation was with Mr. Kelly. We began work on the next day at the factory of the Toledo Scale Company, a room being assigned to us on the fourth floor. I think it had been attached to the Inventions Department.

"The room was occupied on the day of my arrival, and the occupant was moved to another department to make room for us. Mr. Hall remained with me all of the first day and then did not return to Toledo until about a month later sometime in April. Shortly after I had been on this work I called for two assistants, and was furnished with Mr. Bellew and Mr. White, both of whom lived in Chicago. Mr. Bellew is in France, a soldier, and Mr. White lives now in Chicago, and is with our firm.

"Mr. Hall visited us for a day and probably a month later, in May, I met him in Detroit for a few hours. He again visited us in June for a day, and again in August for a two days' period. I have no recollection of Mr. Hall's visiting Toledo after August, 1915, though he may have been there. I came to Chicago a few times to visit Mr. Hall.

311 "After April 1915, I had another assistant named Mr. Berling, who remained with us for about three months, and an assistant named Runner, who was with us about two months. Mr. Berling was attached to our Milwaukee office, and Mr. Runner to our St. Louis office. We also, at one time, had a Mr. Storms of Chicago, helping us at Toledo. He remained about two months. I have also had another assistant named Cutler, but he became sick shortly after he joined us and died in Toledo. He did not do any work on the Toledo Account. After we left Toledo, in October 1915, we worked up our memoranda in Chicago for about two months.

"The first books of the defendant company that I examined were the Customers' Accounts. These were invoices in loose leaf form, similar to the Plaintiff's Exhibit for identification, No. 1. The

first information that was taken from the books was destroyed at Toledo, however, on account of the opposition raised by Mr. Theobald. After these were destroyed we commenced afresh and made our records leaving out the names of the customers and the addresses, which we had first noted from the Customers' Accounts. Mr. Theobald objected to the names and addresses being used in any form whatsoever, and was very insulting about it. He demanded the sheets that we had made, containing the Customers' names and addresses, and while I did not give them up, I told him I would destroy them, if anybody had to destroy them. When he demanded the sheets he objected to the way we were taking the information off the books, because it would give his competitors the names and addresses of his customers. Then we started afresh. After we started afresh we took memoranda without the names and addresses of the customers, and I have these details with me.

"After finishing this memoranda in December, 1915, I was called upon to again visit Toledo in February, 1916, for a period of about six or eight weeks. I had with me at that time an assistant by the name of Gunderson, of Chicago. The first memoranda after those which I destroyed for the year 1906 is taken from the Customers' Account for that year. It is in the handwriting of Mr. White, my assistant at that time."

This instrument was here marked for identification, Defendant's Exhibit No. 1. The memoranda in question is headed,
312 "Toledo Computing Scale Company, Cylinder Scales for the Year Ending December 31, 1906." The first column has the caption, "Sold to;" the 2nd column is headed, "Date;" the 3rd column, "Number sold;" the 4th column, "Style;" the 5th column, "Finish;" the 6th column, "Factory number;" the 7th column, "Amount of Sale;" the 8th column, "Settled by cash and notes;" the 9th column, "Allowed in exchange;" the 10th column, "Scale received and number;" the 11th column, "Sundries;" the 12th column, "Commission paid;" the 13th column, "Commission not checked." Below it appears the words, "Cash discount per agreement," with two lines drawn through the same, and the final column, "Remarks."

"The names of customers were included in the column headed 'Sold to', but we have rendered the names of the customers only in the year 1906, disregarding the other sheets that we had containing the customers' names and addresses as before described. This one was rendered because it had been already extracted, previous to Mr. Theobald's objection. He particularly objected to the addresses, and there are no addresses on the sheet for 1906.

"We obtained the data for most of the columns from the Customers' Accounts, for example, the date of sales, the style number of scale furnished, the finish and factory number of the scale furnished, the amount of the sale, and whether it was settled by cash and notes, and what, if anything, was allowed in exchange. The commission paid was obtained either from the invoice or from the Sales Journal. After we had obtained this data, I checked the foot-

ings and made up the summary, and Mr. Hall looked through them afterwards. I have brought into court 22 volumes, one of which volumes contains 338 pages, and the other volumes contain an average of 200 to 250 pages.

"Turning now to the Exhibit, Defendant's Exhibit 1 for identification, 'Commissions paid agent', it is simply a commission from the invoices. I cannot say whether paid or not. The total is $132.20; it is not $13.220. I am not mistaken. You could not have $13,220 on $1,900. It seems an impossibility to me. This consists of several items. At the top is $29.75. That is not
313 added in the total. It is ruled out. So is the next item, $40. The next two, $32.20 and $35 are included in the total. The next, $30, is not. The next, $35, is included. The next, $30, is not. The next is $30, ruled out. The next, $34, $22.50, $31.50, $31.50, $30, $30.50, $25.30, $34, are not. This was done by Mr. Bellew when he checked these items over. They were stricken out because, I presume, they were not in the commission book for the year 1906. These commissions show on the Customers' Ledger Account, but the commissions are not always placed on the books at the date of the invoices, and those not on the books at the date of the invoice were crossed out, so that for the year 1906 the commissions would agree with the books, and such commissions were extended our heading, 'Commissions not checked'. The commission on the invoice did not always appear in the Sales Journal at the same date as the entry of the sale was made. In some cases the commission would be thrown into the year 1907, and that is entered in the Sales Journal in 1907, so that it was impossible to agree the Commission Account for 1906, if we included those items that appear on the 1906 invoices, but entered on the Sales Journal in the following year. It was not always possible to check the Customers' Ledger Accounts and Commission Account on the Sales Journal because some of these items were impossible to trace. The only way we could deal with the question was to take the Commission Account right through and exhaust every item, which we did not do because it was impossible without spending a tremendous length of time. A commission followed every sale shown on the invoice, and whether that commission was actually paid or not would not neces-sarily be shown by the invoices. A reduction of commission would not be shown by the invoice, but would show on the books. I did not take the trouble to find out the actual commissions paid, for I was instructed by Mr. Hall to disregard the actual commissions paid."

(Witness here produced the memoranda made from the Customers' Ledger Account, headed "Toledo Computing Scale Company, Cylinder Scales Sales for the year ended December 31, 1906, and this memoranda was marked for identification, Defendant's Exhibit No. 2. The Columns in the Exhibit are identifical with those
314 columns hereinbefore enumerated in connection with Defendant's Exhibit 1.)

"Under the column marked 'Commission Paid' appears several items, $35, $44, $35, and $44 being crossed out, and other accounts—

25 in all. I have no total before erasures were made. Those figures were crossed out under my instructions, because the gross sales contained the invoices for 1906, but the commission does not go through the books until 1907, and those commissions applied to that year. As to whether either those sums erased or those not erased were actually paid would be determined from the books of the company. I went no further than this extraction, and disregarded the question as to whether they were paid, under instructions from Mr. Hall. The items that have the lines drawn through them are those that appear on the invoices for the gross sales in 1906, but the commissions therefor- did not go through on the books until 1907, and these commissions apply to *to* the next year. On the memoranda marked Defendant's Exhibits Nos. 1 and 2 appears a memorandum, 'Toledo Computing Scale Company, Cylinder Scales not on Invoice Books for Year ended December 31, 1906'. In that list there is also a column headed, 'Commissions Paid', with items of $35.00, $35.00, $40.00, etc. I secured the information as to these items from the records of the Customer's Accounts, and in the books themselves.

(This memorandum, "Toledo Computing Scale Company, Cylinder Scales not on Invoice Books for Year ended December 31, 1906", was marked for identification as Defendant's Exhibit No. 3.)

"These were entries in the Sales Journals which we were unable to trace with the Customers' Accounts. We depended for our information on the Sales Journal and this Journal gave us the data which we have shown, including the commissions actually paid, or rather, those included under the Commissions Account. These are all the memoranda we have that refer to the cylinder scale business in 1906."

(Witness next produced a bound volume of loose leaves containing memoranda for the year 1907, and headed, "Toledo Computing Scale Company, scales sales for year ended December 31, 1907, transfer No. 21, general records, January and February, 1907, month
315 of January". This memoranda was marked for identification Defendant's Exhibit No. 4.)

"This memoranda is in the handwriting of Mr. Runner. The words, 'Transfer No. 21, general records, January and February, 1907,' mean that it was the title on the back of the book and represents the record of gross sales which were taken from the book No. 21, a Sales Journal"

(The witness then produced another bound volume and indicated therein page 20 showing sheets for the year 1907. This memorandum was marked for identification, Defendant's Exhibit 5.)

"The year 1907 was prepared on a different basis from 1906, and the sheet used there contains the headings as follows: The first column bears the caption 'Sold to'; 2nd column 'Date'; 3rd column, 'Number'; 4th column 'Style'; 5th column 'Factory Number'; 6th column 'Amount of Sale'; 7th column 'Settled by Cash and Notes';

8th column, 'Allowed in Exchange'; 9th column 'Charged to Agent'; 10th column, 'Exchange'; 13th column 'Cancellation'; 14th column 'As to Cancellation.' This memoranda is in the handwriting of Mr. Berling. In the first column, under the head 'Sold to' appears the names of the customers. These memoranda are not complete. They extend about half-way through the year, for we took the customers' books which were arranged alphabetically and started with the book 'A,' exhausted that book, and so on, which would give us sales into December of that year, but all these books, alphabetically numbered, were not extracted. We exhausted one series of books from 'A' to the letter 'M' and another series from 'A' to 'W.'

"It was under Mr. Hall's instructions that I omitted the amount of commission from the statement of memoranda that we prepared. I do not remember just what the wording of Mr. Hall's directions to omit this was, but it was on the occasion of his first visit, some time in April. From that time on I paid no attention to the commissions; merely disregarded them. The memoranda showing commissions paid on any of the sales were contained as the first item on the Customers' Accounts, and the name or the initials of the agent to whom it was paid was also contained on the Customers' Accounts."

Mr. Zane: We want an objection on the record to his as-
316 sumption every time he says that a commission was actually paid because it is tentatively entered upon this invoice.

The Master: Make it an objection, Mr. Zane. It will, of course, appear, but I am trying to keep out the conversation between counsel.

Mr. Meads:

Q. So that under the direction of Mr. Hall, beginning with the year 1907 and up to the end of this accounting period, you took no account of commissions actually paid?

A. No, sir.

Q. I am not talking, Mr. Witness, about commissions proposed to be paid, but commissions actually paid. You took no account of that, did you?

A. Took no account of commissions in relation to the invoices, whether they were paid or not. The various original memoranda which I have produced following 1907 were made substantially as that of 1907.

(Witness here produced a bound volume of memoranda for the year 1912.)

"We have not in this memorandum for 1912 a sheet similar to that shown in the Defendant's Exhibit No. 5 showing memoranda for the year 1907, because the information was not gotten out on that basis. After book A to W we did not complete the memoranda started on sheet Exhibit No. 5, which was not completed for the full year. We started on another plan to take the data beginning January 1, 1907. This other plan is shown in the data compiled

in the exhibit marked Defendant's Exhibit 4, which is complete in itself, and entitled 'Scale Sales for 1907.' It would take some days to go through 30 books of 2,000 each. We went through three sets, 60 books each, with 2,000 accounts in each book. We kept each year complete in itself, except in the one year 1911, which we had started immediately after the year 1906; that is, we took 1911 before we took 1907.

(Witness here produced a volume of memoranda, entitled, "Toledo Computing Scale Company, Cylinder Scales Sales for the year ended December 31, 1911," and it was marked for identification, Defendant's Exhibit 6.)

"This contains columns substantially as those in Defendant's Exhibit 5, but no column appears for the 'Commissions Paid.'
317 Under the heading, 'Sold to,' appear the names of the customers, this being one of the sheets which Mr. Theobald did not see. In this memoranda for 1911, we made no entry or investigation of the actual commissions paid, nor in any of the later memoranda, merely carrying our Mr. Hall's instruction."

(The memoranda for the 1912 period was then produced.)

"The data for these columns were taken from the Sales Journal and the Customers' Accounts. The date and voucher number were taken from the Sales Journal."

Then testimony as follows:

Q. Then the next is "No," number 1 I presume. That means quantity, does it not?
A. Yes.
Q. From the Sales Journal?
A. From the duplicate of the Customers' Accounts from which the entries in the Sales Journal was made.
Q. That was from what you called the Customers' Ledger Account?
A. That is the duplicate of the Customers' Account.
Q. Well, if true, the duplicate would be exactly the same as the Customers' Ledger Account, would it not?
A. If true it would be, yes, but they were always true.

Mr. Meads: I move to strike out the answer of the witness.
Mr. Zane: We object to its being stricken out.

(Question and answer read at direction of Master.)

The Master: That may stand.

Mr. Meads:

Q. When you suspected that they were not true, did you take the trouble to verify or substantiate your suspicion by looking at the Customers' Ledger Account?
A. Well, frequently the original invoices were turned up?

Q. Were what?

A. Frequently the original invoices of the customers were referred to.

Q. Were referred to?

A. Yes.

Q. And whenever you had doubt, you had a chance to check by referring to the original, did you not?

A. Yes.

Q. Now, this item then, of quantity, you could take either
318 from the duplicate of the Customers' Ledger Account or from the original, could you not?

A. Yes.

Q. You had access to them, did you not?

A. Yes.

"The column marked, 'Style,' has two subdivisions below it, one for fan and one for cylinder, and I obtained the data for this column from the duplicate of the Customers' Accounts in most cases.

"The memoranda of sales for the year 1911 was made at an early part of our visit. We did this so as to obtain an idea of how the records were kept and the procedure of the bookkeeping employed. Each year the basis of the accounts were altered; no two years were kept alike. We took the year 1911 after 1906 with a view of getting a fair knowledge of what would be the best procedure to adopt. I am not certain whether we began 1907 after 1911 or not, but in 1908 we adopted the scheme of taking the entries from the Sales Journals alone."

(Witness here produces memoranda for the year 1908, headed, "Toledo Computing Scale Company, Scale sales for the year ended December 31, 1908, Transfer No. 10, General Records, January and February, 1908," and this memoranda was marked for identification, Defendant's Exhibit No. 7.

The words 'Transfer No. 10, General Records, January and February, 1908,' mean that that is the number of the Sales Ledger for those two months and this particular compilation was taken from the entries in that particular Sales Journal. March and April of this year are in Transfer No. 11, General Records. Each month is dealt with on its own basis and balanced with the sales for each month. The columns on this Exhibit are as follows: Date, State, detail, number, F which stands for fan, and C which stands for Cylinder; then a column marked Cylinder Miscellaneous Canadian, and the data that was entered in the column below these headings was obtained from the Sales Journal and not from the Customers' Ledger Accounts. We did not verify them by the Customers' Account except in special cases where it was necessary to turn up the Customers' Accounts to explain an item that was not distinct. In those cases the customers' accounts were examined to verify the
319 transactions. In the column marked 'Canadian' we entered items which were shipped to Canadian customers as shown by the books. Under the head of 'State' we have entered, for instance, New York, Ohio, or the particular State in the United

States to which it was shown on the books that the scales were shipped, or in which they were sold.

"Our system of analyzing the business directly from the Sales Journal, in addition to the year 1908, was carried through the years 1907, 1909 and 1910, and the 1912 period. In the years 1906 and 1911 we verified the Sales Journal Accounts by reference to the Customers' Ledger Accounts, and we had completed a portion of the year 1907 on this plan before we changed to the plan of taking the records directly from the Sales Journal.

(Witness here produced memoranda for the year 1912, entitled "Scale Sales for the year ended December 31, 1912, Sales January to December, 1912," which memoranda was marked for identification Defendant's Exhibit No. 8.)

"This memoranda is slightly different from that used for recording the year 1908. The system was altered in the month of October, 1909, and instead of entering the details of each sale in the Sales Journal, a duplicate of the Customers' Account was used as a voucher for each item in the Sales Journal and we had to examine each voucher to get our information as to whether it was a fan or cylinder scale. We took every voucher, taking item by item in rotation, from the Sales Journal from October, 1909, down to August 31, 1912, or December, 1912. The first column of the sheets and memoranda in Exhibit No. 8 is headed 'Date' and corresponds to the first column in Exhibit No. 7. There is no corresponding column in Exhibit 8 for the column marked 'State' in Exhibit No. 7, the second column being headed 'Voucher Number' on Exhibit No. 8. Also the column marked 'Canadian' in Exhibit No. 7 is absent in Exhibit No. 8, for the reason that in October the company separated the Canadian into a separate section of the Ledger—section No. 5—and these Canadian sales were therefore taken out by us separately. Exhibit No. 8 differs from No. 7 in that 8 has no column for 'State,' and the column marked 'Canadian' present in Exhibit 7 is absent in Exhibit 8. The memoranda for the years 1907, 1908 and 1909 to the month of October was taken out similar to the memoranda shown in
320 Exhibit No. 7, while from October, 1909, to December 31, 1912, the memoranda was taken out on sheets similar to those marked Exhibit No. 8, except for the year 1911, which was taken on the early plan of checking the Sales Journal entries with the Customers' Accounts.

"In the year 1906 there was no Canadian cylinder business. In the year 1907 there were no Canadian cylinder sales. Beginning with October, 1908, we have Canadian sales of cylinder scales, and beginning with November, 1908, there was a separate Canadian sales account started. The first item of Canadian business is dated 1/4/7 of eight fan scales, $300. The first item of cylinder sales is October 27, 1908, Montreal, cash book 1, scale 346-B, $165. The items which I have mentioned as of October, 1908, could not have been entered in this Canadian Sales Account which started a month later, and was entered in the United States sales account. This Canadian Sales

Account is a separate section of the Sales Journal containing U. S. sales. We did not verify the entries in the Sales Journal by the Customers' Account, as full information was contained in the Sales Journal. What I have testified as to this first entry is substantially true of all other Canadian sales after that time."

"There were no cylinder scales shipped to foreign countries in the year 1906—by foreign countries is here meant countries other than the United States and Canada. In the year 1907 there were no foreign sales of cylinder scales."

(Witness here produced memoranda entitled "Analysis of Foreign Scale Sales for the years ended December 31, 1909*1* 1910, 1911 and 1912.)

"This memoranda was prepared from entries on the Sales Journals and from the foreign sales Customers' Accounts. This analysis was prepared at Toledo. In 1908 we found the sale of three cylinder scales, two being sent to Mexico, and one to Holland, the total sales price of these three scales being $367. These three scales were included in the United States Sales Account by the Company. This sale is from a binder, three scales, two to Mexico, one to Amsterdam, $367. 345-B, 347-B and 346-G. Part of the memorandum, the 1911 sheet is in my handwriting, and Mr. Storms wrote 1909, 1910
321 and 1912. The foreign sales are under the head of United States sales but separate from them."

"In the year 1909 there were 96 cylinder scales sold in foreign countries, the sales price of which aggregated $6,020.84. I have no record of any commissions paid on these sales. I know that on certain invoices to W. & T. Avery of England, there was no commission paid, and the prices of those scales were very much less than for corresponding scales in this country; I would say about 40% less. In the year 1910 there were 263 cylinder scales sold in foreign countries, at the aggregate amount of $15,671. All the information for these sales was taken from the Sales Journal. In the year 1911, 199 cylinder scales were sold in foreign countries, at the aggregate amount of $13,130, the information for which items we took from the Sales Journal. For the 1912 period, up to August 31, 1912, there were 145 cylinder scales sold in foreign countries, at the aggregate amount of $9,786.25.

In the year 1912 the items were taken from the Sales Journal in conjunction with the foreign sales Customers' Accounts.

"In taking the figures for the Experimental Account in the year 1902, I used the trial balances for the year. I compiled the data at the commencement of my visit under Mr. Hall's instructions. The Voucher Records of the company were not available, these records having been destroyed in the early years according to Mr. Zolg. We have no data as to the Experimental Account for the year 1903 up to the year 1910 other than the trial balances. In the year 1911 I have some data but it is not complete. (Witness here produced memorandum entitled "Analysis of Experimental Account for the year 1911" which was marked for identification Defendant's

Exhibit No. 9.) There are various columns on the sheet marked, first "Date," second "Salaries," third "Labor," fourth "Purchases," fifth "Freight," sixth "Expense," seventh "Sundries." Certain of these items under the column Salaries specify "No Information" in the handwriting of Mr. White which means that there was no information given on the vouchers for these items. These items marked "No Information" aggregate $470. The proportion of Factory payroll, $637.87 is entered under the column marked Labor in
322 this Account but we had no information as to what the work charged to this Account was for. Also certain items under the purchase journal are marked "No Information" and "Salaries to Certain Individuals." These were charged to Experimental Account but I have no knowledge as to what work was done.

"For the year 1912 I have a memorandum of the Experimental Account. (Witness here produces volume of memoranda for the year 1912, analysis of Experimental Account which was marked for identification Defendant's Exhibit No. 10.)

The aggregate amount of the Account for this year is $15,621.57. I cannot tell the character of any transaction for which an entry is made in this Account.

I have no data as to the Branch Office Expense. I was in the Court Room when Mr. Hall testified as to the various Accounts which he aggregated for his data to spread these Accounts over a period of five years. The Account so spread included those of Branch Offices, Advertising and Litigation. I did not prepare any data or summary of the Expense of Branch Offices for Mr. Hall though I did collaborate with Mr. Hall in preparing the Account known as plaintiff's Exhibit No. 40. I know that he obtained the information which he used to spread these items over a period of five years from the company's exhibits, as I took them down at his dictation in the statement which is marked in this case plaintiff's exhibit No. 39. In this statement the item of Advertising for the year 1902, $5,102.03, is in my handwriting and we took this item from a copy of the company's trial balance taken from the company's ledger for that particular year. The same is true of Litigation and Patent Expense for all the years entering into this statement. The figures for 1902, 1903, 1904 were taken from the trial balances of the company for these years and 1904 from the general ledger act. and they were calculated over a period of five years and the expenditures from the year 1906 up to 1912 were taken from the exhibits of the company's yearly statements which are in evidence. I prepared this statement under the dictation of Mr. Hall in Chicago in the early part of the year 1916. The entire statement is in my handwriting. Mr. Hall had the yearly statements of the company before him and dictated the figures for this exhibit. The amount of Litiga-
323 tion for the year 1906 was taken from a trial balance of the company's books for that year. I prepared trial balances taken from the company's books up to 1905. I don't remember whether I had before me this instrument called the Trial Balances

of December 31, 1902 in preparing this statement Plaintiff's Exhibit No. 39. I had various documents in front of me but just what they were I do not remember.

(The statement headed Toledo Scale and Cash Register Company trial balance of December 31, 1902 was marked for identification Defendant's Exhibit No. 11.)

The figure for Advertising for 1902, $5,102.03 was put down by me at Mr. Hall's dictation and is taken from this trial balance of December 31, 1902 (Defendant's Exhibit No. 11.) The item of Advertising 1903, the figure $1,177.78 contained in Plaintiff's Exhibit No. 39 I do not recollect and do not know what instrument it was taken from unless it was from the trial balance. The same is true of the item of 1904 Advertising, $11,988.44 and the same is true of the item of 1902 Chicago Office Expense $177.52. The same would apply to the item of Chicago Office Expense in 1903—$2,985.43. This was taken from a trial balance. I have no other recollection of the instrument from which is taken the item New York Office Expense for 1903—$1,292.94. The same applies to the items of 1904. The item New York Expense 1904 of $4,637.82 was taken from the trial balance of December 31, 1904, as far as I can remember. I took down the figures as dictated by Mr. Hall and made the calculation in conjunction with Mr. Hall, but other than that I have no knowledge as to the instruments used in furnishing the items.

The witness was asked as to various items of expense in Exhibit 39 of plaintiff, and said: "As to those before 1906, they were obtained from the yearly trial balances made by him from the books of defendant, and after 1906 from the Plaintiff's Exhibits, Yearly Statements of Defendant".

"I have 11 trial balances covering the years 1902 to 1912, inclusive, and had to prepare many other analyses, synopses and memoranda. Thus I have extracts of the sales account in the general ledger for each year from 1906 to 1912."

(One of these extracts, entitled, "United States Sales Ac-
324 count Folio 90, year ended December 31, 1911," was put in evidence and marked for identification Defendant's Exhibit No. 12.)

"Then I have an analysis of the Machinery Account for 1911."

(This was marked for identification, Defendant's Exhibit No. 13.)

"The Machinery Account was analyzed for the year 1911 only, because, we selected that year to find out how the books were generally kept, eventually we decided that there was nothing attached to the Machinery Account as regards this accounting. We also prepared an analysis of the Real Estate and Building Account for the year 1911, but not for the other years. Similarly, we took the Horse and Wagon Account for 1911, and the accounts of 'Tools and Patterns,' 'Inventories,' 'Patent Expense' and the W. & T. Avery Royalty Account were examined and the year 1911 only. The

Surplus Account was examined for every year that that account appears on the books—1910, 1911 and 1912. The account, Reserve for Losses, Bills Receivable, (Customers' Accounts) was analyzed for the years 1910 and 1911; also the Reserve for Agents' Accounts, for the years 1910 and 1911. We made an analysis of the Undivided Profits Account for 1911 only. We made a schedule of Inventories of Materials, Packing Crates, Factory Supplies, and Advertising, for the year 1911 only. We also made a summary for each year of the Accounting period of the apportionment of the Sales Account:

"Other papers presented include:

Q. You may go right on, Mr. Witness, without my asking a question each time and state what other instruments or summaries you prepared and give the number of them.

A. Summary of Details Sales Account for the year ended December 31, 1911, one for each year, was prepared on the same basis, making a total of seven.

Analysis of Special Allowances for one year only, for the year ended December 31, 1911.

Summary of Accounts on Toledo Ledger containing Canadian Expenses and Charges for three years, the years ending December 31, 1909, 1910 and 1911.

Classification of Cylinder Scales, number sold less returns
325 and charge backs for each year from 1906 to 1912 inclusive.

Summary of Canadian Sales from 1908 to 1912 inclusive.

Summary of Canadian Charge Backs for years ending December 31, 1909 to 1912 inclusive.

Debits to Canadian Sales for years ending December 31, 1909 to 1912 inclusive.

Analysis of Litigation Account for the years ending December 31, 1911 and December 31, 1912.

"The information as to items in Litigation does not indicate the character of the service. That information I was not able to procure. The documents were not produced. They were asked for and they were stated to be mislaid. (The last two sentences were stricken out as not responsive.) The analysis of Patent Expense Account for 1911 and 1912 and analysis of Legal Expense Account made for 1911 do not show particulars of the character of the service or of the indebtedness for which the expenditure was made. The legal Expense Account was for fees in connection with the collection of defendant's accounts."

"I also prepared an account of the Accrued Preferred Stock Interest for the years 1909, 1910, 1911 and 1912, and a statement of the corporation tax paid and supported by receipts for the years 1909, 1910, 1911 and 1912. Also five classifications of foreign cylinder scales sold for the years 1908 to 1912, respectively. These were for scales sold in places other than the United States and Canada. We prepared this statment of foreign scales sold at Toledo and it was in my office at the time when Mr. Hall and myself prepared the statement referred to heretofore. I also prepared a copy of the

Organization account for the years 1901 to 1909 when the account was finally closed out, being transferred to Profit and Loss."

Then testimony as follows:

A. Extracts from ledger account of Joseph P. Cleal, Toronto, Canada, for the year ended December 31, 1909.

Q. Do you know what the Joseph P. Cleal, Toronto, Canada, account represented?

326 I will withdraw the question owing to the time you have taken to answer it.

Mr. Witness, do you not know that the Joseph P. Cleal, Toronto, Canada, account represented a branch office account at Toronto, Canada?

A. It was simply to assemble parts there on behalf of the Toledo Scale Company.

Q. It was a branch office at Toronto, Canada, was it not?

A. Yes, sir.

Q. Go ahead. What is the next item?

A. I think that constitutes the main summaries I made unless one or two, I can't tell unless a list is prepared.

Q. Yesterday in stating the approximate number of pages of the instruments which you caused to be brought into the court room or which your employer caused to be brought into the court room, you did not refer to these documents about which you have testified, did you?

A. No, sir.

"I have also notes for which revised statements were substituted. The list which I testified to was not taken from those notes. The analysis of the Litigation Account is original. Those notes are principally in the nature of taking out the number of cylinder scales sold. They were all checked over again, and probably a few errors that were made were adjusted. One of those binders contains the records and information in connection with the investigation of shipping records."

Q. Well, do you want to add to the list that you have given of instruments which you have prepared the statement of what that binder contains?

A. Well, I didn't know that the question of the factory entered into your question in the first place.

Q. In order that I may be plain to the witness, I wish to obtain from you a statement of or list of all the memoranda or synopses which you prepared or caused to be prepared in your examination of the books of the defendant company. Now, I have a number of these which you have given. If there are any others, please give them.

Mr. Zane: Why don't you read your indices?

Mr. Meads: I don't care how he gets at it, if he only covers it.

Mr. Zane: Read your indices in every book and we will get through with this.

327 A. All right, sir.

Summary of books and records used during 1904 to 1912.

Number of invoices or Customers' Account Books 1904 to 1912.

Mr. Zane: Go on.

A. Copies of Sales Journal Headings 1904 to 1912.

Mr. Zane: Read it right along.

A. Details of Scale Sales Account and how subdivided from time to time 1907 to 1912. Sample of form of Chargebacks.

The Master: Go right along, Mr. Witness.

A. Statement of Style Numbers, Cylinder Scales received from Mr. Zolg.

Trial Balance as of July 15, 1901.

Trial Balance as of December 31, 1901.

Summaries Scale Inventories, years 1901, 1902, 1903, and 1904.

Trial Balance as of December 31, 1902.

Trial Balance as of December 31, 1903.

Trial Balance as of December 31, 1904.

Profits and Loss, December 31, 1905.

Trial Balance, December 31, 1905 and 1906.

Profit and Loss debits, December 31, 1906.

Profit and Loss credits, December 31, 1906.

Detailed Analysis of Debits, December 31, 1906.

Analysis of Scale Inventory, December 31, 1906.

Analysis of Real Estate, December 31, 1906.

Analysis of Tools and Patterns, December 31, 1906.

Analysis of Patent Expenses, December 31, 1906.

Analysis of Litigation Account, December 31, 1906.

Copy of Scale Sales Ledger Account, December 31, 1906.

Detailed Analysis of Scale Sales, December 31, 1906.

Summary of monthly totals, year to December 31, 1906.

Summary of Sales, Three months to December 31, 1906.

Summary of Sundry Items posted to Scale Sales Account, three months to December 31, 1906.

Summary of credits to Scale Sales Account, three months ended December 31, 1906.

Summary of debits to Scale Sales Account, three months ended December 31, 1906.

328 Summary of Exchange Scale Account, October, November and December, 1906.

Analysis of Cylinder Style Numbers, December 31, 1906.

Summary of Second-hand Toledo Scales, December 31, 1906.

Details of Cancellations.

That should be Second-hand Toledo Scales.

Cylinder Scale Sales.

Details of Cancellations, Fan Sales.

Summary of Commissions, October, November and December.

Anaalysis of Canadian Scale purchases, year to December 31, 1906.

Analysis of Canadian Sales to Dean & McLeod, Hamilton, Ontario, supported by Gurney Scale Company.

Trial Balance. Profit and Loss Balance Sheet year ended December 31, 1907.

Detailed Analysis of Profit and Loss Account year ended December 31, 1907.

Summary Sundry Debits to Profit and Loss Account, year ended December 31, 1907.

Extract of Scale Inventory, same year.

Final Summary Apportionment of Sales, ditto.

Copy of Scale Sales Ledger Account, ditto.

Summary of Scale Sales as per Sales Journal, ditto.

Details of Foreign Sales, ditto.

Summaries of debits to Scale Sales, ditto.

Mr. Zane: What is "ditto"?

A. Year ended December 31, 1907.

Mr. Zane: Read it then. Don't put "ditto" in there.

Mr. Meads: don't bulldoze the witness.

Mr. Zane: "Ditto" does not mean anything on the record at all.

A. (continued). Summary of Scale Sales Account, Journal Entries, year ended December 31, 1907.

Summary of Suspense Items, year ended December 31, 1907.

Summary of Second-hand Sales included in Scale Sales Account, year ended December 31, 1907.

Details of Second-hand Sales including Scale Sales Account, year ended December 31, 1907.

Classification of Cylinder Numbers of Sales, year ended December 31, 1907.

329 Classification of Cylinder Numbers, Debits to Sales, year ended December 31, 1907.

Summary of Sales to Dean & McLeod, Hamilton, Ontario.

Year Ended December 31, 1908.

Trial Balance. Profit and Loss and Balance Sheet, year ended December 31, 1908.

Detailed Analysis of Profit and Loss Account, year ended December 31, 1908.

Condensed Analysis of Profit and Loss Account, debits and credits, year ended December 31, 1908.

Extracts Scales Inventory Account, year ended December 31, 1908.

Final Summary of Sales, year ended December 31, 1908.

Copy of Scale Sales Ledger Account, year ended December 31, 1908.

Summary of Scale Sales (sales journal entries), year ended December 31, 1908.

Details of debits and credits to Scale Sales Account (journal entries, etc.), year ended December 31, 1908.

Final Analysis of debits to Scale Sales Account, year ended December 31, 1908.

Analysis of special item debited to Scale Sales Account. Quantity discount, special allowances, etc. Year ended December 31, 1908.

Analysis of sundry debits to Scale Sales Account, year ended December 31, 1908.

Analysis of suspense items debited to Scale Sales Account, year ended December 31, 1908.
Details of foreign sales included in U. S. Scales, year ended December 31, 1908.
Summary of Second-hand Sales included in U. S. Sales, year ended December 31, 1908.
Details of Second-hand Sales included in U. S. Sales, year ended December 31, 1908.
Summary of Classification Cylinder Scales with regard to styles sold, less chargebacks, U. S. Sales, year ended December 31, 1908.
Classification of Cylinder Numbers U. S. and foreign sales, year ended December 31, 1908.
Details of classification of numbers U. S. sale, year ended December 31, 1908.
330 Classification of Cylinder numbers Debits to Sales, year ended December 31, 1908.
Summary of Canadian Sales, year ended December 31, 1908.
Ditto as to classification of style numbers, year ended December 31, 1908.
Statement Second-hand Sales included in Canadian Sales, year ended December 31, 1908.
Statement of Scales sold in Canada included in U. S. Sales, year ended December 31, 1908.
Now, this lot is the same, all for the year 1909.

Mr. Meads:

Q. The others are all confined to the 1908?
A. Yes.

Year Ended December 31, 1909.

Trial Balance Profit and Loss and Balance Sheet.
Analysis of Debits to Profit and Loss Account.
Analysis of Credits to Profit and Loss Account.
Extract of Scales Inventory.
Copy of special journal entry re Inventory and Organization Account.
Copy of Organization Account.
Final Summary of gross sales.
Copy of Scale Sales Ledger Account.
Summary of Scale Sales Account (sales journal entries).
Summary of debits to U. S. Sales Account.
Detailed Analysis of Debits U. S. Sales Account.
Summary of Second-hand Sales included in U. S. Sales.
Final Summary of Chargebacks.
Copy of Toledo Scales Charged back Ledger Account.
Summary of Charge backs from sales journal entries.
Analysis of Charge Backs (debits, sundry journal entries).
Analysis of Charge backs (credits, sundry journal entries).
Final Summary Classification. Style numbers, cylinder sales, sales less charge backs, etc.

Summary of cylinder numbers of scales sold.
Details of cylinder numbers scales sold.
Classification of cylinder numbers re charge backs.
Classification of cylinder numbers, debits U. S. Sales.
331 Examples of Toledo Scale Allowances. January and February months.
Schedule of Agents' Accounts written off to Profit and Loss Account.
Summary of Canadian items charged to United States business.
Details of accounts United States business.
That should be detailes of Canadian accounts charged to United States business from Ledger account of Joseph P. Cleal, Toronto, Canada.
Statement showing scales charged to Canadian scale purchases. Account with J. P. Cleal and credited to Canadian scale sales.
Extract from ledger account Canadian Scale Purchases.
Final Summary Canadian Sales.
Summary of Canadian Sales from sales journal entries.
Summary of Canadian Sales included in U. S. Sales.
Summary of Canadian Second-hand Sales included in Canadian Scale Sales.
Analysis of debits to Canadian Scale Sales Account.
Final Summary of Classification of Cylinder numbers. Canadian Scales, Sales less debits.
Details classification of cylinder numbers, Canadian sales.
Detailed classification of cylinder numbers, debits to Canalian sales.
Detailed classification of Cylinder numbers, charge backs.

For the Year Ended December 31, 1910.

Trial Balance, Profit and Loss and Balance Sheet.
Note on difference in Trial Balance.
Analysis of Unsubscribed Stock Account.
Extracts from Reserve Accounts for Accounts and Bills Receivable Accounts.
Examples of errors in names as between voucher and actual customers' accounts.
Analysis of Profit and Loss Surplus Account, Debits.
Analysis of Profit and Loss Surplus Account, Credits.
Final Summary of gross sales.
Copy of Scale Sales Ledger Account.
Summry of Scale Sales Account (sales journal entries.)
332 Summary of Scale Sales Account (sundry journal entries.)
Statement of Sales not traced.
Summary of Second-hand sales included in U. S. Sales.
Summary of Rebuilts included in U. S. Sales.
Summary of Exchange Scales included in U. S. Sales.
Analysis of errors in footings, etc.
Final Summary of debits to U. S. Sales.
Detailed Analysis of debits to U. S. Sales.
Final Summary of Charge backs.

Copy of Toronto Scales charged back.
Summary of Charge backs (sales Journal entries.)
Summary of Charge backs (sundry journal entries.)
Schedule of Second-hand, Rebuilt, Exchange Sales, etc., included in debits to charge backs Accounts.
Statement of Canadian items included in U. S. Sales
Summary of Canadian charges, etc. charged to United States business.
Final Summary of Classification. Style numbers, Cylinder sales. (Sales less charge backs.)
Summary of Cylinder numbers scales sold.
Details Cylinder numbers scales sold.
That includes foreign sales.
Classification of Cylinder numbers, Second-hand and Rebuilt.
Summary and classification of Cylinder numbers debited to Charge back Account.
Classification of Cylinder numbers, debits, to Sales.
Summary of Canadian Sales.
Summary of Canadian Second-hand Sales included in regular sales.
Final Summary Classification of Cylinder numbers. Canadian. (Sales less charge backs.)
Details of Canadian Cylinder numbers, Scales Sold.
Details of Classification Cylinder numbers, Canadian charge backs.
Details of Canadian charge backs. Entries as per sales journal.

Year Ended December 31, 1911.

Trial Balance, Profit and Loss and Balance Sheet.
Analysis of Machinery Account.
Analysis of Real Estate and Building Account.
Analysis of Horse and Wagon Account.
Analysis of Power Wagon Account.
333 Analysis of Tools and Patterns (inventory.)
Analysis of Patents Account.
Analysis of Surplus Account.
Analysis of W. & T. Avery Royalties Account.
Condensed Analysis Reserve for Losses—Bills Receivable (Customers' Account.)
Condensed Analysis Reserve for Accounts Receivable.
Condensed Analysis Reserve for Losses on Agents' Accounts.
Details of Amounts written off Reserve for losses on Agents' Accounts.
Analysis of Undivided Profits Account.
Analysis of Accounts and Notes Receivable, Adjusted Account.
Copy of journal entries replacing inventory of competitive scales on books.
Copy of journal entry re accounts receivable, adjusted, etc.
Analysis of Surplus Account.
Schedule of Inventories and Summaries of Accounts making up Inventories. Materials, Scales, Lumber, Platter, etc.
Final Summary gross sales.
Copy of Scale Sales Ledger Account.

Detailed Analysis of Scale Sales Account.
Summary of U. S. (sales journal entries credits).
Summary of monthly totals U. S. Sales. Debits and credits.
Adjustment of 1911 sales as between Cylinder and Fan.
Analysis of Sales unable to trace. Afterwards on further checking traced.
Analysis of Second-hand, Rebuilt and Exchange Sales included in Fan Sales.
Summary of debits to Sales Account.
Analysis of debits to U. S. Sales Account, Cylinder.
Analysis of debits to U. S. Sales Account, Fan.
Summary of Canadian Loaned Scales included in U. S. Account.
Final Summary of Charge backs account.
Copy of Toledo Scales charged back account.
Summary of Charge backs (sales journal entries, credits)
Debits to Toledo Scales charged back.
334 Schedule of Second-hand, Rebuilt and Exchange Scales included in Detail to Charge back Account.
Details of credits to Toledo Scales charged back.
Summary of debits to Special Allowances.
Details of debits to Special Allowances.
Summary and Analysis of credits to Special Allowances.
Summary of Canadian charges, etc. charged to United States business, and details.
Note re District Manager F. L. Ditzler.
Final Summary Classification of Cylinder numbers. Sales less charge backs, etc.
Summary of Classification of Cylinder Numbers—Sales.
Details of Classification Cylinder Numbers—Sales including foreign.
Details of Cylinder Sales credited to Rebuilt Sales.
Details Classification credited to Rebuilt Sales.
Details of Classification Cylinder Numbers, Charge backs.
Classification of Second-hand and Rebuilt Sales debited to charge backs.
Classification of debits to Sales Account.
Extract of Sales of Style No. 81, 183, 353, 585.
Summary of Canadian Sales.
Summary of Second-hand Canadian Sales included in Canadian Scale Sales.
Analysis of debits to Canadian Sales.
Detailed Analysis and Summary of Canadian charge backs.
Final Summary of Classification Canadian Cylinder Numbers. Sales less charge backs, etc.
Summary of Classification Sales. Cylinder Numbers.
Details of Classification Sales. Cylinder Numbers.
Details of Classification Canadian Charge Backs.
Summary of Classification Canadian debits to Sales Account.
Analysis of Experimental Account.
Analysis of Litigation Account.
Analysis of Patent Expense Account.
Analysis Legal Expense Account.

The Year Ending December 31, 1912.

Trial Balance, Profit and Loss and Ballance Sheet.
Analysis of Loss and Gain Account.
335 Analysis of Surplus Account.
Extracts from Moody's Manual, year 1915.
Extract Machinery Account, Tolls and Patterns.
Accrued Preferred Stock Interest Account. Extracts 1909, 1910, 1911 and 1912.
Extracts of Inventory Accounts.
Copy of Inventory Account-Cylinder, August 31, 1912.
Copy of Inventory (Canadian) Cylinder, September 3, 1912.
Summary of credits for materials, various periods, treated as fan sales in our statement.
Summary of Exchange, Second-hand and Rebuilt Sales, various years, credited to wrong accounts in various years.
Summary of Exchange, Second-hand and Rebuilt debits to sales charged to wrong accounts, various years.
Summary of Exchange, Second-hand and Rebuilt debits to Charge Backs Account, various years.
Finaly Summary Scale Sales.
Copy of Scale Sales Ledger Account.
Summary of Scale Sales.
Summary of sundry debits and credits to Scale Sales.
Debits of sale invoices not traced.
Summary and Details of debits to sales.
Final Summary of Charge Backs.
Copy of Toledo Scales, Charge Backs.
Summary of Charge Backs.
Schedule of Second-hand, Rebuilt and Exchange Scales debited to Charge Backs.
Statement of credits to Charge Backs.
Copy of Special Allowances.
Summary of debits to Special Allowances.
Summary of credits to Special Allowances.
Details of debits to Special Allowances.
Examples of Toledo Scale Allowances.
Statement of Corporation tax paid 1909, 1910, 1911 and 1912.
Final Summary of Cylinder Scale numbers. Sales less Charge Backs, etc.
Summary of Cylinder Scale numbers of September 3, 1912.
Summary of Cylinder Scale numbers subsequent to September 3, 1912.
336 Details of Classification Cylinder Scale numbers to September 3, 1912.
Details of Classification Cylinder Scale numbers subsequent to September 3, 1912.
Classification of Second-hand and Rebuilt Sales included in U. S. Sales.

Analysis of Charge Backs prior to September 3, 1912, and afterwards.
Classification of Second-hand and Rebuilt debited to Charge Backs.
Summary of credits (cylinder numbers) to Charge Backs.
Classification of foreign sales.
Summary of Canadian Scale Sales.
Summary of Canadian Second-hand included in Canadian Scale Sales.
Analysis of debits to Canadian sales.
Summary and Details of Canadian Charge Backs.
Final Summary and Classification of Cylinder Sales Numbers. Canadian Sales less debits.
Summary and Classification of cylinder Numbers. Sales Canadian.
Classification of Cylinder Numbers—Charge Backs.
Classification of Cylinder Numbers, debits to sales Canadian.
Analysis of Experimental Account.
Analysis of Litigation Account.
Analysis of Patent Expense Account.
Analysis of Legal Expense Account.
Classification of Sales through books after September 3, 1912, with order dates, etc.
Classification of Sales Through books after September 3, 1912, with order dates, Canadian.
Current Assets, first draft.
Current Liabilities, first draft.
Profit and Loss Account Debits first draft.
Profit and Loss Account Credits, first draft.
Comparative Balance Sheet.
Surplus Account.
Profit and Loss Account, Toledo.
Profit and Loss Account, Canadian.
Profit and Loss Account, Vulcanizing.
Toledo profits after writing back proportion of expenses.
337 Surplus Account corrected.
Profit and Loss, Toledo.
Profit and Loss, Canadian.
Profit and Loss, Vulcanizing.
Toledo profits after writing back proportion of expenses.
Details of Expenses to be spread over a period of years.
Average prices on gross sales after deducting charge backs, etc., Toledo.
Average prices on gross sales after deducting charge backs, etc., Canadian.
Direct cost of Cylinder scales before and after taking off charge backs, 1910.
Ditto 1911.
I mean direct cost of Cylinder scales 1911.
Direct cost of Cylinder Scales, first, sales to August 31, 1912.
Direct cost of Cylinder Scales after taking charge backs off.

Statement showing net income after using defendant's costs on Cylinder Scales, 1910 and 1911.
Statement showing net income after using defendant's costs on Cylinder Scales, 1912.
Statement showing net income after using defendant's costs based on Toledo Computing Scale Company's Overhead, 1911 and 1912.
Statement showing percentage of Cylinder Sales and Fan Sales on total sales each year, Toledo.
Statement showing percentage of Cylinder Sales and Fan Sales on total sales each year, Canadian.
Summary of Second-hand, Rebuilt, etc., included in first U. S. Sales, used to adjust sales and percentages.
Statement showing percentages of Cylinder Sales and Fan Sales on total sales each year, Toledo.
Summary of sales, Cylinder and Fan, used in first draft.
Notes on Zolg's testimony.
Statement showing number of Cylinder Scales sold after deducting charge backs and debits to sales each year, 1906 to 1912, Toledo.
Statement showing number of Cylinder Scales sold after deducting charge backs and debits to sales each year, Cylinder, 1908 to 1912. Toledo Foreign.
338 Statement showing Cylinder Scales sold after deducting charge backs and debits to sales each year, Cylinder, 1906 to 1916, including Second-hand and Rebuilt Toledo.
Statement showing number of Cylinder Sales after deducting charge backs and debits to sales each year, Cylinder, 1906 to 1912. Second-hand and Rebuilt included in first sales Toledo.
Statement showing number of Cylinder Scales sold after deducting charge backs and debits to sales each year, Cylinder, 1908 to 1912. Canada including Second-hand, etc.
Statement of amounts classified wrongly.
Summary of comparisons each year, Fan and Cylinder.
Summary of Fan Sales, 1907, 1908, 1909, 1910, 1911, 1912.
Journal entries errors in sales journals in totals, 1907 to 1911.
Copies of invoices, etc.
Sundry papers.

"Other papers prepared were extracts from Shipping records to ascertain the cylinder scales shipped from Toledo.

"The Notes of Mr. Zolg's testimony are in my handwriting and were prepared by me after the testimony of Mr. Zolg had been written up. I also made notes of the cross examination of Mr. Zolg, and attached them to the binder. Mr. Hall examined these notes as well as myself, in March 1915, and on other occasions.

"The Comparative Balance Sheet, page 14 thereof was prepared at Toledo about August or September, 1915."

(This Comparative Balance Sheet was marked for identification, Defendant's Exhibit No. 14.)

"This instrument is in Mr. Hall's handwriting, as is page 16,

which is called 'Surplus Account' and shows this account from January 1, 1904 to December 31, 1912."

(Surplus Account was marked for identification, Defendant's Exhibit, No. 15.)

"The Toledo Profit and Loss Account, from January 1, 1904 to December 31, 1912, is in the handwriting of both Mr. Hall and myself, and these accounts were prepared in August 1915, the major portion being in Mr. Hall's handwriting. The Canadian Profit and Loss Account was from January 1, 1905 to December 31, 1912. A portion of this account is in Mr. Hall's handwriting. The
339 Vulcanizing Profit and Loss Account from January 1, 1910 to December 31, 1912 is mostly in Mr. Hall's handwriting. The sheet 'Summary of Toledo Profit after writing back proportion of expenses to be carried forward as applicable to future operations," is partly in Mr. Hall's handwriting, and as far as I can remember, was prepared in August 1915, long before Mr. Zolg gave his testimony in this case. Pages 14 to 23 contained Mr. Hall's handwriting."

"Most of the notes and figures in the summary marked Defendant's Exhibit 14 are in my handwriting. These notes were prepared in Toledo in August, 1915. Certain of the figures on the first page and practically all of those on the second page are in the handwriting of Mr. Hall."

(These two sheets on which were the figures in the handwriting of Mr. Hall were marked for identification, Defendant's Exhibits 16 and 17.)

"A half page following the page of the exhibit marked Defendant's Exhibit No. 17 is also in the handwriting of Mr. Hall."

(This page was marked for identification Defendant's Exhibit No. 18.)

"The trial balance, 'Profit and Loss Account for Balance,' for the year ending December 31, 1905, has certain figures written by Mr. Hall. On the first page of this trial balance the figures in the first few columns are my own, but the figures in the next to the last column, together with seven or eight items in the last column are in Mr. Hall's handwriting. On the second page the bulk of the figures are my own, while Mr. Hall has made certain notations in some of the columns, particularly in the last two columns on the page. On the third page of this trial balance most of the figures are in my handwriting, but several items in the last column are in Mr. Hall's handwriting. In the balance sheet as at January 1, 1906, the first column is in Mr. Hall's handwriting, as are all the columns on the first sheet. This last memorandum in Mr. Hall's handwriting was made on his last two visits to Toledo, about April, 1915. I have a book called the 'Miscellaneous Binder,' and several lists of details that I did not read in my indices of our records this morning. They are:

Details of books examined in connection with extracting style numbers from shipping records.

340 Details of numbers of scales in shipping record books which don't give any style numbers.

Summary of Cylinder Scales manufactured and sold and on hand from January 1, 1906, to August 31, 1912; also total as per shipping records.

Statement showing classification of styles shipped each year and in stock at September 3, 1912, as per shipping records.

Details of Scales with Toledo factory numbers included in the Canadian sales section, 1908.

Details of Scales with Toledo factory numbers included in the Canadian sales section, 1909.

Details of Scales with Toledo factory numbers included in the Canadian sales section for the years 1910 and 1911.

Details of Scales as per shipping records shipped to J. P. Cleal, Canada.

Examples of some cylinder scales in shipping record books with "Canadian" written across.

Analysis of Cylinder Scales shipped during the year ended December 31, 1912.

Cylinder Scales included in shipping record books not shipped till after date of expiry of patent.

Statement of Cylinder Scales placed into stock as per shipping records from September 4th to September 10th, 1912.

Examples of Canadian Scales shipped from Toledo to foreign customers.

Statement of errors of shipping record headings as compared with buff tickets pasted into shipping record books.

Copy of invoice A. Gulland, showing difference of style number in comparison with shipping record.

Copies of book entries, invoices or customers' accounts, showing different style numbers in comparison with shipping records respecting cylinder styles from the year ended December 31, 1907, to August 31, 1912.

Style altered on invoice but not in sales journal, 1908.

Copies of invoices which don't give factory numbers, year ended December 31, 1907; year ended December 31, 1908; year ended December 31, 1909.

Invoices that show the amounts were entered in sales journal on different dates.

341 Copy of shipping record with alteration.

Copy of invoice which shows cylinder style number doubtful.

Sundry notes on shipping records.

Copy of Peter Smith & Son invoice, 1908, which shows 30 cylinder style.

Extract of sales, Cylinder and Fan, marked "Sample" in 1910.

Extract of sales, Cylinder and Fan, marked "Sample" in 1911.

Examples of sample scales. Consignments not charged back, etc.

Copy of W. & T. Avery, Limited, invoice Cylinder Scales.

Example of a Dayton scale renumbered.
Examples of both Fan and Cylinder Scales loaned and exchanged.
Examples of Cancellations.
Copies of invoices queried.
Copies of invoices, both fan and Cylinder and Charge backs.
Copy of invoice, Cylinder Scale, July, 1909.
Example of new settlement.
Examples of Cylinder and Fan Scales taken in exchange.
Note on loaner scale.
Examples of rates of commission on Fan and Cylinder Scales.
Examples of some customers' accounts which don't give any reference to sales journal, in some cases references are torn off.
Example of Toledo scales taken in exchange, Fan, debited to Exchange Scale Account.
Copy of Customer's Account, Cylinder Scale.
Copies of correspondence between Toledo and Canada, Canadian customers, to prove that practically all business is transacted from Toledo.
Copies of correspondence re Canadian Business from Canadian banks and customers to Toledo.
Notes on Canadian business to prove that the assembling of cylinder scales in Canada was about the end of the year 1909.
342 Copy of invoices of parts shipped from Toledo to Canada.
Copy of material purchases, Canada ledger, years 1910, 1911.
Notes of Commission, Actual and prospective, with examples.
Examples of sales journal summaries years 1910, 1911.
Note on parts supplied to Canada which Mr. Zolg said were charged at cost.
Notes on Canadian business.
Adjusted Surplus Account.
Statement of profits based on net and gross costs.
Expenditure adjusted by extraordinary charges charged over a period of five years. Experimental, Advertising, Litigation, etc.
Summary of percentage of commission based on total sales.
Reconciliation as between costs based on net and gross sales.
Statement agreeing surplus with Toledo statement at August 31, 1912.
Statement of adjusted surplus for each year, 1906 to August 31, 1912.
Statement of commercial expense from December 31, 1906, to August 31, 1912.
Comparative statement of manufacturing cost.
Statement of profits, Cylinder and Fan, based on cost of gross and net numbers of scales sold.
Details of how profits are arrived at.
Percentage of Cylinder and Fan on costs of sales, etc.
Details of percentages and expenses, 1906 to August 31, 1912, on gross cost.
Details of percentages and expenses, 1906 to August 31, 1912, on net cost.

Analysis of the year ended December 31, 1909. Differences between trial balance and the Toledo Scale Company Exhibit.

Analysis of Undivided Profit, year ended December 31, 1911.

Details of Toledo profits based on Toledo statement marked for identification.

Copy of Surplus Account, 1911.

343 Statement of expenses as per trial balance and Toledo Company statement marked for identification, 1911, in order to balance with correct surplus.

Extracts of totals of Agents' balances, debits and credits, from 1908 to August 31, 1912.

Extracts of totals. Exchange Account, Rebuilt, Toledo Allowances, Second-hand Sales. Debits and Credits.

Extracts showing adjustments made in the year ended December 31, 1906, 1907, 1908, 1909, 1910.

Summary of Cylinder Styles, December 31, 1906, to August 31, 1912.

I have now indicated all the papers and memoranda that was prepared by me.

"In the item which I have referred to, 'Examples of rates of commissions on fan and cylinder scales, pages 111 and 112,' (these pages were marked for identification, Defendant's Exhibit 19) are contained various examples of the rates of commissions paid on these scales. There are several entries that we took from the Customers' Accounts referring to commissions paid on various sales. One of them shows here a commission was paid to an agent named Reynolds of $50 and a further commission of $6.25 was paid to another agent or manager named Graham. Another item shows 'Straight Sale,' one without exchange scale showing that there were commissions paid respectively of 40% and 5%. The data from which we made these various memoranda were the Customers' Ledger Accounts and the Sales Journal.

"On pages 123 to 127 I have noted, 'Copies of invoices of parts shipped from Toledo to Canada.' We took those items from the Material Invoice Book, which shows only shipments of parts of scales,—no completed scales. I did not go through all the invoices, but made tests of them for the period ending December 31, 1911 and period ending August 31, 1912.

"I have prepared an analysis of the Power Wagon Account for the year 1911. I do not recollect any items on the books for a Power Wagon before 1911. That account consists of three items, Grabowsky Truck, speedometer and speed indicator. Properly speaking, I did not make an analysis of this account but merely an extract from the Ledger.

"The greater part of the memoranda in the binder which
344 I have called the Miscellaneous Binder was prepared at Toledo on the occasion of my first and second visits there and the remainder was prepared in Chicago after I had returned from Toledo Certain of the figures compiled at Chicago were prepared by Mr. Hall. There are the details of the summaries in the binders,

and of all of the extracts from the journal of sales, the charge backs.

"All of the extracted matter which I have taken, including the binders, would fill approximately 6,000 to 7,000 pages, about 14 x 10 inches in size. In all there are 22 volumes and extracts of charge backs, detail statements of sales, debits of sales, analysis of charges, one volume of 29 pages and another of 100 pages, and that is all.

Redirect examination.

By Mr. Zane:

"When I first went to Toledo I started to examine the year 1906. I did a very small part of it, and was instructed by Mr. Hall to go on to the year 1911, with the idea of trying to see how the figures would compare with the statement put in by Mr. Zolg for the year 1911. We did not go through everything for the year 1911, certain accounts being omitted. We extracted in this year all the sales as per the United States Sales Account, both debits and credits, the Charge Back Account, and attempted to extract the Exchange Scale Account, Toledo Allowances, Second Hand Sales, Special Allowances and extracts from various miscellaneous accounts. We attempted to make a detailed examination of all the different items that would constitute an account for that particular year. The first thing we did was to abstract the sales; and for that purpose we took the duplicates of the Customers' Accounts. They were filed as voucher records, duplicate Customers' Accounts for each sales recorded in the Sales Journal. In that particular year, 1911, we abstracted the entries from the Customers' Account and found that the figures did not agree with the Sales Journal, so that we had to check over that particular year from the duplicates of the Customers' Accounts, which were the vouchers for each entry. Mr. Zolg produced the customers' accounts in bound books and also produced the voucher records which were duplicates of the customers' accounts and from which
345 the entries in the Sales Journals were entered. We saw the Sales Journals which were produced by Mr. Zolg. The date of invoice on Customers' Accounts in some cases would be some day in the year 1911, but would not be entered in the Sales Journal until the year 1912. Accordingly, it was impossible to take the Customers' Accounts by the dates and agree with the Sales Journals.

"When we first took down certain items, Mr. Theobald raised an objection—the objection being directed to our writing down the names and addresses of customers. He examined the sheets and objected to the names and addresses of his customers being taken off the books of the company. He demanded the sheets so that they might be destroyed. These sheets that he saw were the commencement of the year 1911, and they were eventually destroyed by myself, and we started the year 1911 afresh, taking the names without the addresses of the customers for the year 1911. That work that he had objected to and that we had destroyed we had to do over again. That in 1911 was the only work destroyed. He was quite insulting in his request for the records we had made, and used profane lan-

guage that I do not care to repeat. Then we went on and completed 1911, and we did that first.

"On the customers' accounts we were examining, we found entries of commissions. Thus, in the exhibit marked Plaintiff's Exhibit No. 1, which is a copy of one of these customers' accounts, under the entry 'Commissions' are the initials A. E. L., which designate the agent, and the figures $52.50 show the amount of the commission on the gross sales. The year 1906 was being prepared at the same time as 1911. In 1906 we started to do the work as in 1911, taking off the items from the customers' sheets or duplicates. In a column of Exhibit 1 we entered the amount of commissions found on the sheet. The year 1906 was analyzed at the same time as 1911 by other assistants. On those sheets showing the extracts for these years we had a column headed 'Commissions Paid.' This was error by the accountant. He ought not to have put the word 'Paid.' It is really the commission taken from the invoice which does not really mean that it was paid. There is nothing on the books that shows that
346 the commission had been paid when it was entered on the Customers' Accounts. Certain of these items on our abstracts of the commissions are crossed off by drawing a pencil line through them. That is because the commission appear on the books in the year 1907, though in the abstracts taken from the Customers' Accounts the commissions were copied down as of the same date as the sales in 1906. When we compared our abstract with the commission account we found some of them were entered in the following year, and these were crossed off from the 1906 extract. In the Special Account on the Sales Journal, called the Commission Account, the total commission allowed on a particular sale was entered without reference to whether it had been paid or not, only showing as a charge against the business. Thus, on the sheet of a Customer's Account marked Plaintiff's Exhibit No. 1, the sale is to a person named Anderson, of a style 300 cylinder scale, blue finish, and the selling price was $100. The commission allowed is $29.75. We found this item, $29.75 on the Sales Journal under the Commission Account, but entered under the year 1907 instead of on the date of the voucher, in 1906. In making up the total of the commissions, that commission would appear in the account made up in the year 1907. For the year 1906 we had three sheets for sales of cylinder scales there being 57 such sales, 2 of which were charge backs, leaving the net number of cylinder scales sold in 1906, 55. The Customers' Accounts for these sales were arranged in alphabetical order. They did not bind them together in the order in which the invoices were actually made, as to date. Because of filing invoices alphabetically we might find an invoice for a sale made in December before finding one for a sale made in January of the same year. The Sales Journal was also a loose leaf book, while the ledger was a bound volume where we could be certain leaves had not been transferred or changed. Our comparison and verification of accounts was made against the general ledger. Only the monthly totals of the Sales Journal were carried to the General Ledger, but we verified the totals and used the loose leaf Sales Journal for details. I could not tell

now how long it took us to make up our extract of the account of
1906, but we completed the sales for 1906 before our account
347 for the year 1911 was entirely completed. It was the first
part of our work for 1911 that contained the addresses of the customers to which Mr. Theobald objected. He also objected to our using the christian names of the customers so we finally decided to make up the account with only the surname of the customers for the year 1911. In extracting the commission's account for 1906 we found certain entries that applied to fan scales sold in 1905. We finished the three sheets of 1906 before 1911 was finished. The work for 1911 did not contain addresses of customers. We did not use the Christian name, only the surname, in 1906 and 1911. We did not attempt to extract the commissions from the Customers' Accounts in other years than 1906 and 1911, unless it was for the first portion of 1907. We were doing part of 1907 while carrying on the work for 1906 and 1911. In 1907 we went through two alphabetical sets of customers' accounts, and we have the original figures. That method was eventually dropped and superseded by a new method. Mr. Theobald's objections to our first method of taking addresses from the Customers' Accounts were made after we had taken the first series of Customers' Accounts for the year 1907, as the first series of books arranged in alphabetical order contained sales for two or three years. After Mr. Theobald's objections we agreed to use the surname only.

"We were unable to trace the commissions actually paid on a sale without a great deal of difficulty, as the commission account represented the commissions on all classes of scales, new scales, second hand scales, and exchange scales, and it would have been necessary to extract the account in full, dealing with the credits to the commission account. In cases of returned scales, the commission was credited to the commission account and debited to the agent. To have gone through this commission account in the proper manner, and to segregate the commission on new scales, rebuilt scales, exchange scales and second hand scales, it would have been necessary to go through all the records separately which would have entailed a considerable amount of time, probably three or four months. It would have been a difficult matter to have gotten the correct figures,
as in some cases the commissions were entered on the books
348 before the sales entry, and in other cases after the sales entry.
It would be impossible in some cases to trace them, the credits in the Commission Account. Mr. Hall's instructions were that the Commission Account was so complicated and mixed up that it was decided not to try to trace them through. The plan that was finally adopted was to pro rate those total commissions as between cylinders and fans in proportion of cylinder sales to the total sales. We then took that percentage of the commission account. Extract from transfer book 21, which is marked Defendant's Exhibit No. 4, was taken from the transfer book of the Toledo Company, No. 21, which was produced by Mr. Zolg. This book was a general journal, containing the records of the sale and commission and full details of the sales. They later changed this system by substituting a voucher system, which just gave a number of a voucher and no detailed information.

This voucher was a duplicate of the Customers' Account. Prior to their change they had entered the details from the Customers' Account on to the Sales Journal, including the name of the person, the amount and the terms of the sale. The commission that was entered there would have been the commission payable if the sale had been consummated. In other words, it was commission allowed, and not commission paid. This would be subject to all obligations being carried out on the part of the customer. In 1907, after changing our plan, we went back to the beginning of the year and did the work again. In 1911 we did the work over again. In 1906 we only checked over the items by the sales journals. We prepared the account for the year 1908 after the account for the year 1907. In preparing our account, we did not put down names of customers, for 1909, 1910 or 1912. I found it possible to take the items from the Sales Journals, item by item. In preparing our account for the year 1908 we took every item in rotation from the Sales Journal. In several cases we examined the actual commission account probably because something was indistinct, the Customers' Account would be referred to. We dealt with every month on its own basis.

"We segregate the sales to Canadian customers under a separate column headed 'Canadian' and we found some Canadian
349 sales entered in the United States sales Account; they were errors in bookkeping; they were entered in the wrong account. There was another account called 'Canadian Sales Account.."

"Our extract for the year 1911 was checked back to the Sales Journal for details, and as to the other years, we found all our information in the Sales Journal. If in any particular case the entry on the Sales Journal was indistinct, or we could not tell what it was, we turned up the Customers' Account to try and verify it. As our account for the year 1911 was first made up from the duplicates of Customers' Accounts, when we checked in the Sales Journal, we found that there were sales dated in December, 1911, which did not appear on the Sales Journal until the year 1912. The same applies to the commencement of the year. Take the month of January, there were sales dated December, 1910, which were enterd in January, 1911. Therefore, we had to check over the details from the voucher records to get an accurate figure.

"In taking off the figures of sales for the year 1909 we used the Sales Journal up to the end of September, 1909, when the system of bookkeeping was changed by the Toledo Company. This system was changed on the first of October, 1909, after which they used duplicates of the Customers' Accounts as the voucher records. Our records for the year of 1909 after October 1st was, therefore, taken from the duplicates of the Customers' Accounts. The originals of the Customers' Accounts were arranged in alphabetical order in loose leaf books, while the duplicates of the Customers' Accounts were arranged in numerical order according to the number of sales in the Sales Journal, running from 1 to 50 or 1 to 100, according to the entries on the pages of the Journal. The duplicate of the Customers' Accounts corresponded to the entry in the Sales Jour-

nal, but where it happened that a figure might not be clear, as for example, the style number, we would refer to the original of the customers' record to verify it. The entries on the Sales Journal up to October 1st, 1909 were entered in detail, the totals for each particular year were posted to the general ledger. We checked the sales account in the general ledger and the figures were balanced month by month, with the journal, and each total was
350 agreed with the monthly total for the account in the ledger for the entire year. The totals were corrected by months and years, according to the books.

"In distributing the figures of certain account over a five year period, we went back to the accounts for the year 1902, and we asked for data on the accounts generally, for the full period, and we were told by Mr. Zolg that the documents were destroyed up to and including the year 1910. He said that they had been destroyed to make room for other documents. We obtained the expense accounts for the years 1902, 1903, and 1904 and 1905 from the general Ledgers. We did not find any trial balances for the year 1902, and I don't remember having made any inquiry for such a trial balance. I made one up myself, getting the items which entered into my trial balance from the General Ledger, taking the balance of each account, and showing the business according to the books for the year 1902. I did the same for the year- 1903 and 1904. These trial balances prepared by me for these yearly years were correct as per the books.

"The reason we took off the Machinery Account for the year 1911 was to try to form an idea of the nature of the entries in the company's books, and the year 1911 was the year we selected for these tests. For the same reason we took off the accounts 'Real estate and Buildings,' 'Power Wagon Account,' 'Horse and Wagon Account,' 'Tools and Patterns Inventory,' and the Patent Expense Account for 1911. I was instructed to take off the Patent Account for both the years 1911 and 1912, by Mr. Hall.

"We took off the Surplus Account for the year 1910, 1911 and 1912. There was no Surplus Account on their books for the year 1909, or preceding years, the account in these early years that corresponded to the Surplus Account being the Profit and Loss Account, which account we also took.

Cross-examination.

By Mr. Meads:

"By reference to Defendant's Exhibit 1, I find that the first sale of a cylinder scale was on the 10th of November, 1906. In
351 our 1906 account there are three items of sales in November, and the remainder are all in December.

"Each of the commissions which appeared under the column of, 'Commission Paid,' on the Customers' Accounts appeared somewhere in the Sales Journal. Where the matters of actual commission were in suspense for a few days, if the period of suspense was near the last of a year, the commission would not appear in the Sales Journal

until after January first of the following year. In the sale of the first cylinder scale, before referred to, the sale was made on November 30, 1906, while the commission appeared in the year 1907; I don't just remember what day in the year 1907. I have no information in my record that would give information as to the date of any of the commissions which actually appeared in the Sales Journal. The same is true of the later years of the accounting period, that in some months, say November and December of any particular year, the commission of some of the sales would appear in that particular year and other commissions would appear on the books of the next year. It is also true that sometimes a sale which was made in March of a particular year would not be entered on the Journal until a later month of the same year. In the majority of cases, however, the commission was entered at the time of the sales. We abandoned the plan of keeping track of commissions, under instructions from Mr. Hall, after we had examined the early portions of the 1907 period and the year 1911.

"After Mr. Theobald objected to the use of names and addresses, we agreed to drop the addresses and christian names of the customers. We told him that we would begin afresh on the 1911 account and destroy the 1911 sheets that he had examined. Mr. Theobald said (and here his remark is quoted literally) I asked him what his objection was. He said the addresses. He demanded the sheets. I said they were extracts, and my company's property. He said 'Give them to me and I will destroy them.' I said 'I will destroy them if anybody does.' I said we would begin afresh and leave out addresses. I think it was the 1911 account that we were then working on. We started on the 1906 first and next took the 1907 and the 1911 at the same time. The 1907 sheets did not have addresses on them—just the names of the customers. The ones
352 Mr. Theobald objected to had the names and addresses on, and I personally destroyed them.

"When a scale was pulled, the commission was credited to the Commission Account, and debited to the agent, so that the books of the company show the actual amount of commission that each agent got on any particular sale. When I stated on redirect examination that 'To have gone through the Commission Account properly would have taken three months,' I meant by 'properly' to segregate the Commission Account under the headings of 'New Scales,' 'Rebuilt Scales,' 'Exchange Scales' and 'Second-hand Scales,' seeing that the commission was in one general Commission Account, covering all scales sold. In the Customers' Ledger Accounts, similar to Plaintiff's Exhibit No. 1, under the Commission Column were initials which represented the names of the agents. The agents' names were given in full on the originals of the Customers' Account. The company had an account with each of its agents, and when an item appeared on a Customers' Account showing the amount of a commission there was an entry entered at some time in the books of the company showing a credit to that agent for the amount of the commission. If a portion of that commission was uncollected, the agent's

account was charged. It was possible to determine the actual commission paid on any particular sale to any particular agent, but, as I stated before, it would have taken a considerable time, probably about three months. I spent at Toledo about six or seven months' time in examining the Toledo company's books, and when I stated that the Commission Account would have taken three months, I meant that it would have taken three months more of my own time, with probably one or two assistants. Owing to the nature of the transactions I don't know what would have been involved in attempting to trace those items. From the time I first took the stand here until the present I have not talked over this case with anyone on behalf of complainant.

"The originals of the Customers' Ledgers Accounts were arranged in alphabetical order in several groups or books of loose leaves bound together. The duplicates of the Customers' Accounts used in connection with the Sales Journal were arranged numer-
353 ically in the order of the entries in the Sales Journal. For example, in the month of January the first entry on the Sales Journal might be No. 5000. That would be the number of the order. This number would be shown on the duplicate of the Customers' Account, at the right-hand lower corner of the duplicate and on the Sales Journal this number would appear on the first margin of the page. Other than this notation of the number the duplicate of the Customers' Account was exactly the same as the original. In every case the name of the agent who made the sale was entered on the Customer's Account, but we never made a list of these Agents' Accounts. Mr. Hall dealt with the matter of prorating commissions though I assisted him in checking the figures. Outside of checking the calculations made by Mr. Hall I had nothing to do with the apportionment of the commissions. When I was testifying in answer to Mr. Zane's questions as to what was done on the Commission Account, I meant what was done by Mr. Hall. My work in checking Mr. Hall's Commission Statement was done about March, 1915, at Chicago, after I had returned from Toledo. We took the net sales making no distinction between foreign sales and those in the United States and divided them into the total commissions to obtain the ratio that applied for each year.

Redirect examination.

By Mr. Zane:

"The proportion that we took of the Commission Account, as apportionable to cylinder scales was determined as follows: As the total sales are to the total commissions, so the total cylinder sales are to the total cylinder commissions, or as the total sales are to the total cylinder sales, so are the total commissions to the total cylinder commissions. Accordingly, we divided the total sales into the total commissions, then multiplied the amount of the total cylinder sales by the proportion which the total sales bore to the total commissions.

354 JAMES HALL, a witness recalled by plaintiff, testified as follows:

Direct examination.

By Mr. Zane:

"In the early days when we commenced this examination, I instructed Mr. Slater to make a detailed analysis of the accounts for the year 1911, showing as far as possible each individual sale, either of new scales or second hand scales, applying against each sale any commission which might apply thereto, making due allowances for the refund of the commission in came of any of the scales being sent back or exchanged. In other words, to apply to each sale, no matter of what kind the exact commission that belonged thereto. We endeavored to do that. The result of following out this instruction was not satisfactory to us for the reason that we could not do as I had first contemplated—apply the specific commission against the specific scale sale, since we could not apply the return commissions against the return scales. The reason why we could not was that the books in those years were not sufficiently detailed with information. To get the matter down thoroughly I would have to analyze that Commission Account, item by item, exactly as the sales were analyzed, and the result was, that owing to the different classes of scales, namely, cylinder scales, second hand scales, exchange scales, etc., you would have applied the exact commission to that exact division of sales thereby taking out the entire commission account. Now, that result could not be obtained, consequently the result, as far as I was concerned, was not satisfactory nor reliable, and so to continue that throughout the whole period was not a practical proposition because of the volume of work involved. To take that Commission Account, which was for cylinders, fans and second-hands, and alalyze it against those divisions of sales would have been a work of great magnitude, and having in view the result would not be accurate, bearing in mind the items which you could not apply. I considered the work impracticable, as to the length of time and as to the result. It would be extremely difficult to make an accurate estimate of the length of time that it would have taken. I should not undertake to get
355 those results even approximately accurate, or as accurate as they could be gotten from the books within a period of nine months to a year's work with a force of from three to four men.

"My next instruction was to disregard the commissions in so far as the analysis attempted for the year 1911 was concerned and get out the detailed analysis of sales as between fans, cylinders, second hand, exchange, etc. The proportion of commissions apportianable to the cylinder sales was then to be determined by finding the proportion that the cylinder sales bore to the total sales, and pro rating the Commission Account on the same basis. I have examined Mr. Zolg's Account filed in this action, to ascertain how it corresponded with the commissions figured on cylinder sales obtained by me on the pro rating basis, and I find that the r[illegible] of commission

allowed by me exceeds the rate of commission allowed by Mr. Zolg in the Account filed. The percentage of his commission to his sales in the year 1911 was 29.8% and in the year 1912, 30.2%. In the statement I compiled and filed as Plaintiff's Exhibit 40, the commission rate averaged 31.73% for the year 1906; 34.2% for 1907; 38.39% for 1908; 35.36% for 1909; and 31.38% for 1910, so that on my method of accounting, I arrived at a larger rate of commission than was arrived at by Mr. Zolg. I think that my method of apportioning the Commission Account is a fair one.

Cross-examination.

By Mr. Meads:

"The bound paper entitled, 'Toledo Computing Scale Company, Statement of Profits, Cylinder Scales, 1906-1912', was prepared by me. By this I mean that I accept the responsibility for all the figures that are in it, as they were made either by me personally, or under my direction. I did not typewrite the statement, nor did I make all the footings on the instrument, but the report was typewritten in my office and the footings were made under my direction. I know that to be a copy of the statement set to the typewriting department, and it was checked by the force in the office for checking all drafts to final typewritten form. In my direct examination I stated that I had taken the data for this statement from
356 evidence submitted by Mr. Slater and Mr. Zolg and other witnesses for the plaintiff. By the other witnesses I meant Mr. Mould or Mr. Reeves. In my direct examination I stated the cost of Labor and Material per scale for the type 300 cylinder scale was $14.86. This was based upon the Account rendered by Mr. Zolg and upon the testimony of either Mr. Mould or Mr. Reeves. Mr. Zolg showed certain labor and material costs for scales. He afterwards testified the statement to be correct. Afterwards I think it was Mr. Reeves testified as to the same number and same styles. My recollection is that there was evidence in the record that 300 type cylinder scales would cost the same as the type 345, this being the next type number available. I think either Mr. Mould or Mr. Reeves testified on this question of the prices of scales being made up in series. That is the substance of the testimony, as I recall it, except that the scales manufactured in the earlier years cost less than scales manufactured in the later years, that is, in 1911 and 1912. I do not know of my own knewledge that scales would cost less in those earlier years, but either Mr. Reeves or Mr. Mould so testified, or that is what I recall as their testimony. We made no investigations as to the cost of cylinder scales. We took the statement of Mr. Zolg and the testimony in the record that in 1911, five years after this period started, a 345 scale cost $14. 86, as a warrant for saying that in 1906 a type 300 scale cost the same amount.

"I testified in my direct examination, 'My entire experience has been along the line of examining accounts for the purpose of determining profits.' In order to determine profits, as an expert accountant, you must first determine costs on the whole, but not by

individual units. To determine whether a man has made a profit in his business you must first ascertain whether the thing he is selling is sold for more or less than it costs. We did not, in our investigation, on which we were working for more than a year and a half, make any investigation as to the cost of scales in 1906, for the reason that the information as to the unit cost of the scale was not available. As a fair proposition, I would say that from my knowledge as an expert accountant, that in the experimental stage goods cost more. However, I did not make any allowances for that when I fixed a
357 price of $14.86 for the 55 scales sold in 1906. I assumed that the figure $14.86, the cost of the type 345 scale in 1911, was the cost of the number 300 scale in 1906. I do not know just how many cylinder scales were produced in 1911, but the gross number sold in 1911 was 5,329 cylinder scales, and there were 654 scales returned or charged back, leaving the net number sold in 1911, 4,875. I assumed that this figure given by Mr. Zolg as to the cost in his Account was correct and though I had to ignore most of the other information submitted by Mr. Zolg in his Account, I think it was fair to the company to charge a factory cost of $14.86. I have also stated that under all the conditions it would necessarily cost more to make 55 scales per unit cost than it would to make 5,000 scales, but I made no allowance for that in my account. This was done because it was the only basis available on which I could predicate costs. I had never had any experience in the scale business prior to this case, nor had I ever visted any manufacturer of cylinder scales before I took up this case.

"I began this statement of profits, which is marked Plaintiff's Exhibit 40, about the month of April, 1916. I had previously visited Toledo to confer with Mr. Slater on March 4, 1915, on April 1st, June 3rd and August 3rd, staying one day on the occasion of each visit. I was also there on August 17th and 18th, and again on December 11, 1915. I find this from the office records.

"I accepted this cost of $14.86 as the nearest standard from the information I had at hand. I do not know what the finish was on those 55 scales sold in 1906, nor do I know anything as to the relative cost of a gold finish scale and a blue finish scale, except generally, that they are approximately the same. I would be surprised to learn that the gold finish costs from six to seven dollars more than the blue finish. As a matter of fact I know nothing about these costs. I ascertained from Mr. Zolg's Account that all scales, with one exception, running between the numbers 83 and 354 were entered at $14.86, the single exception being the 345, entered at $14.75. With that information before me, I didn't believe it unreasonable to take the 300 at $14.86, the highest figure stated. I have adopted this cost in the year 1906 as well as in the years 1907, 1908, 1909, 1910, 1911 and the period from January first to September 3rd, 1912."

358 Then testimony as follows:

Q. Mr. Witness, you were next asked to distinguish between the theoretical accounts which you submitted, one known as Basis No.

1 and one known as Basis No. 2, one known as Basis No. 3 and one Basis No. 4. At whose instance did you submit those suppositious accounts?

A. My own instance.

Q. How?

A. I made those out.

Q. Did you consult with anybody while you were making them up?

A. After they were made up I consulted with counsel.

Q. After they were made up?

A. Yes.

"In preparing Basis No. 1 I charged to the Toledo Company the sales and I gave credit for the cost of manufacture of the net number of scales sold. In this Basis I disregarded the cost of manufacture of the two scales that were returned in that year, though they were presumably manufactured in that year, and the same would be true of the scales returned in each succeeding year.

In the year 1906, 2 scales were returned.
In the year 1907, 62 scales were returned.
In the year 1908, 183 scales were returned.
In the year 1909, 394 scales were returned.
In the year 1910, 559 scales were returned.
In the year 1906, 654 scales were returned.
8 Mos. of 1912, 369 scales were returned.

In my Basis No. 1 the cost of manufacture of that large number of return scales was not entered. The reasonable assumption is, in matters of this kind, that the scales come back and are sold again. Consequently the 57 scales in 1906 included two scales entered twice. Perhaps they came back and went out more than once, but in any event they came back and were resold. If, at the end of the accounting period, these scales were not sold but were on hand, they would be allowed for in the inventory of the 1839 scales on hand at the close of the period. If the two scales returned were not sold that same year, they would be sold in the succeeding year, and the cost would be allowed for there. I would not call this method
359 a matter of guessing, whether these returned scales were resold, but would call it a simple accounting method. I have no record that those scales were not junked or destroyed in transit, but I considered it a reasonable assumption and not a guess that the return scales were sold.

"In my Basis No. 1 I give the Toledo Company credit for the cost of manufacture of 1,159 scales, while the scales that came back in that year numbered 63. I have not given credit for the cost of manufacture of these 63 scales. In the year 1908 I have not given the company credit for the cost of manufacture of the 183 scales charged to sales in that year. Some of these scales may have been manufactured during that year and some may not, but may have been sold again after having been returned. I believe that disregarding the cost of manufacture of all these returned scales and failing

to allow as a credit to the company the cost of manufacture of such scales might not be fair to the company, and that is the reason I made Basis No. 2. On the other hand, Basis No. 2, I don't think is exactly fair to the plaintiff, and I placed the truth as being about midway between them. My idea in putting in the two bases was so that the court could make an approximation between them. I did not put in either basis on the assumption that they were erroneous bases and the court should strike a happy medium between them, but I prepared Basis No. 1 because Basis No. 1, theoretically, is the sound basis. The bookkeeping of the company is not particularly good, consequently I adopted the basis to the other extreme Basis No. 2, and it is my judgment the fair figure would be midway between the two. This applies equally to the years 1910, 1911 and 1912.

"These bases No. 1 and No. 2 were drawn up to give a reasonable guide to the court and to the plaintiff, and they are not exact statements of fact. They are, in each particular case, an approximation.

"Referring to the 'Cost of Labor and Material per scale,' in Basis No. 1 for the year 1910, I took the figures adopted in the Account Furnished by Defendant. Any scales not recorded there were taken on what I rgarded to be the nearest type number, and the same would be true throughout the years 1909, 1908, 1907, and 1906; at no time was any allowance made for the newness of the business or the
360 quantity of the products. My note referring to the costs of these scales based on 'Zolg's Testimony,' means the Account Furnished by Defendant, and Mr. Zolg's testimony applying to this account.

"The overhead expense of combined labor and material was taken from the yearly statement for the year 1910—Plaintiff's Exhibit No. 10. The labor direct, $95,120.13, was taken from Exhibit 10 of plaintiff. This was the statement prepared at the close of 1910. As I testified on direct examination, this yearly statement was prepared before the books of the company were finally closed. I know that because it did not agree with the books. The original of this Exhibit No. 10 was in pencil and there is no signature to the instrument or authentification of any kind; apparently it was taken from the books of the company before the final entries were put on, because it does not agree with the books. Accordingly, I took it upon myself to modify the statement to bring it into line with the books. In this statement, Exhibit No. 10, the direct Labor for the year appears on page 6 of the statement, in the amount of $96,442.27. I have entered it in my account as $95,120.13. The account has been modified. The item for Material on the yearly statement is $103,916.05, and in my account I have used the figures $112,514.11. That item has also been modified. I made my account from the Exhibit supported by the books and where necessary amplified from the books. Those items are not predicated upon the Exhibit No. 10, for it is quite apparent that there are discrepancies by looking at the start of the next statement. I did not modify all of these yearly statements in the Exhibit. I only modified them in so far as I testified on direct examination. Thus, after I had examined Exhibit No. 10, and modified it, we found that the cost of labor was $95,120.15, the

balance of the account as shown on the ledger. I am satisfied this figure is correct, though I did not investigate the figures. I assumed the books were correct. The same is true of the Material Account. We obtained the Factory Overhead by dividing the sum of $207,-634.24, the aggregate of the labor and material cost into $130,711.47, the aggregate of the indirect labor and factory expenses. In that way we obtained our percentage of overhead expense of
361 62.95%.

"The next item, 'Commission to Agents, 31.38% of Sales,' we took the total commissions from the yearly statements, Plaintiff's Exhibit 10. On page 7 of this statement there are two items, Agents' Commissions, $384,210.55 and District Managers' Commissions, $26,-057.07, a total of $410,267.62. This was the figure used for total commissions. We assumed that this total commission applied on the entire sales of the company's products and the commissions applied to the cylinder scales was $243,945.94, being 31.38% of the sales. To obtain this percentage of 31.38, we divided the $1,307,-438.08, the total sales of all scales, into the $410,267.62, the total commissions. We obtained the figures for the total sales from the Exhibit No. 10 by aggregating the several totals for net United States and foreign sales, and the figure immediately preceding Toledo Scale Allowances, $10,857.56, and exchange scale sales $90,502.22, the aggregate is $1,307,438.08.

"We included all scales whether sold in the United States or foreign countries. I consulted with counsel—Mr. Morse—as to the law on the subject of foreign sales as to whether or not the Computing Scale Company were entitled to an accounting on these foreign sales. At the insruction of Mr. Morse we have included them.

"We took the total of all sales, being entire new, second-hand, and foreign sales, except the Canadian sales, and divided the figures so obtained into the aggregate amount of commissions paid, as shown by this Exhibit 10, $410,267.62. This figure of commission agrees with the books, so that I did not have to modify the figures.

"I did not say I had added exchange scale allowances and Toledo Scale allowance. I started with net U. S. and foreign sales which means net after deductions of Toledo Scales charged back. Exchange scale allowances and Toledo Scale allowances. That represented net scales. The figure $410,267.62 agrees with the books.

"The item, 'Bond Interest,' $1,749.96, for the year 1910, was taken from the statement, Plaintiff's Exhibit 10. This item was for interest on a mortgage of the property of the Toledo Company. I cannot state the particular property, but I take it to be real estate, and
362 buildings. The payment of interest for the use of money is a legitimate use of the corporation's funds, but I struck out the item of 'Bond Interest' for this reason: At the commencement of a business you are assumed to have sufficient capital to operate and in first-class accounting you would ascertain your profits before payment of interest. You earn certain profits out of which you will pay interest on any money you have borrowed; second, you pay preferred dividends, if you have any out; and the balance is left for labor and for the use of your own Capital. I do not know how much capital

the Toledo Scale Company had to start with, as I was not interested in this question. The problem I was confronted with was, what profits did this company make on the manufacture and sale of scales, not the borrowing of money. Now, the resultant profits in the manufacture and sale of scales are used to pay interest on any indebtedness the company may have and the balance for the profit on the use of its own capital and its own labor. The use of the money for which the bonds were issued is immaterial in my estimation; I would not regard the bond interest as a legitimate charge if the purpose of the money was for erecting an additional factory room to manufacture scales, and even if it were necessary to borrow the money to erect that room as a wise business venture, I have no knowledge at all as to what this interest was paid for.

"The next item of $22,379.46 for Interest is taken from the last page of the statement, Plaintiff's Exhibit No. 10, and represents money actually expended by the company, if the books are correct, for the use of borrowed money. I did not make any investigation as to whom that interest was paid, but it is my recollection that it was paid to various banks in Toledo for money borrowed by the company and used in the operation of its business. I think the Toledo Scale Company should stand the burden for the payment of interest for the use of the borrowed money, and before it could pay any profit, it was in honor bound to pay the interest for the money it had bor*or*wed. I have included in the profits in my account, the
24 and odd thousand dollars in this year for interest, and I
363 will say this, 'If you are entitled to interest, you are not only entitled to interest on the money you borrowed at the bank or the money you secured on a loan, you would be entitled to interest on all the capital you have invested.' I would have been doing manifest injustice to include two items of interest on borrowed money and bond interest and ignore the other item of Interest on Capital.

"The items for Indirect Labor and Factory Expense for this year were taken from the yearly statement, Plaintiff's Exhibit No. 10. The Account, Indirect Labor, appears on page 6 of this Exhibit, as $31,136.16. The other items included in the aggregate sum which I used, were:

Factory supplies	$16,360.16
Experimental	13,042.30
Tools and Patterns	18,752.66
Packing and shipping	16,166.21
Lumber	3,160.30
Horse and Wagon expense	517.97
Trucking	1,380.95
Power, heat and light	5,300.48
Maintenance, repairs and alterations	6,776.85
Superintendent's & Factory offices	10,637.47
Miscellaneous	3,901.09
Rebuilt Department	10,573.74

These figures, taken from Plaintiff's Exhibit 10, are subject to adjustment or modification because the entries on this Exhibit did

not accord with the final figures used on the General Ledger. In other words, this statement was not the final statement for the year and the entries marked thereon were made before the books were closed into profit and loss account. I think it is an extreme statement to say that this was merely a memorandum made by some bookkeeper before adjustments of inventories were entered on the books. I should imagine that items were put in afterwards on instructions of the management.

"We modified the figures for the yearly statements as follows:

Tools and Patterns, by a reduction of		$2,914.72
Factory Supplies, by a reduction of		3,491.82
Power, Heat and Light, by a reduction of		207.38
	Packing and Shipping, by a reduction of	850.21
364	Lumber, by a reduction of	11.42
	Maintenance, repairs & alterations, by an addition	886.52
Machinery, by a reduction of		715.25
Office furniture and fixtures by an addition		320.41

I personally did not examine these accounts except in a most general way, but I have seen a memorandum made by Mr. Slater correcting this statement, Plaintiff's Exhibit No. 10, with the books, and to conform to the books. Mr. Slater, on my instructions, checked this statement, and the resulting differences are here now before me.

"The item, 'Losses on Agents' and Customers' Accounts—3% of Sales,' has no corresponding figure in the Plaintiff's Exhibit No. 10 nor on the books. The account on the books under the heading, 'Surplus' contains sundry items in respect to losses. I may say the Toledo Company does not regard the bad debts as an expense, but is charged by the Toledo Scale Company to Surplus. This figure 3% of sales for Losses on Agents' and Customers' Accounts appears for the first time in Exhibit 40, the account made up by myself. The Surplus Account had these bad debts included in it. In the year 1906 the company wrote off bad debts, $7,135.62, charged to Surplus Account or to Undivided Profits Account; in 1907, $2,641.26; in 1908, $2,571.22. They had no bad debts in 1909, but wrote off Agents' Accounts of $96,696.39. In 1910 they had no bad debts but wrote off Agents' Account, $32,000. In 1911 they wrote off Agents' Accounts for $27,377.75, and in 1912, $10,411. The aggregate of these items covering the period from 1906 to 1912 was $178,833.14. 3% allowance on the total sales would be $198,023.14. Accordingly 3% on total sales bear a figure somewhat in excess of the amount allowed by the company. I have given the company more than they had actually written off because I assumed that there would be a future allowance for Agents' Accounts, accruing up to August 31, 1912, and I considered it fair to allow about $21,000 in round figures for this additional amount that I assumed would be written off.

"As the Toledo Company kept its books, each individual agent had an account with the company, and any balance due by the agent

to the company was shown as a debit and any balance due
365 by the company to the agent was a credit. When we closed our examination for the period, August 31, 1912, we took as an asset of the company the amount of Agents' Debit Balances appearing on the books—a net asset of $158,151.73. The only information I had as to how much of these agent debit balances had been collected during the period 1906 to 1912 was what the company admitted in its books were bad. In the statements the company treated these agents' debit balances as assets. If, as a matter of fact, those balances were uncollectable, then the amount of profit as shown by our Exhibit 40 would be reduced accordingly. Our agents' Debit Account for the year 1906 showed $59,264.46.

For the year 1907	$65,956.17
For the year 1908	126,534.70
For the year 1909	97,871.07
For the year 1910	112,615.55
For the year 1911, a net of	124,560.01
On August 31, 1912, a net of	158,151.73

As I understand the system, these Agents' Debit Balances are the net results before we credit the prospective commissions. For example, if a scale were sold for $140, on which there should be paid a 45% commission, or $63, and the cash payment of $20 was made on the scale, the agent would credited with the proportion of the commission applying to him on that payment and as commissions developed by the payment against the scale from the customer, the agent would be credited so much more. Thus, at the time of the sale the agent would be credited with a prospective commission of $63, and the Commission Account would be charged with $63. If the scale was not paid for, you would debit the commission account $63, and credit the agents' prospective commission account $63. If $40 were paid on this scale, the agent would be credited with his percentage of the commission thereon, or $18. You would debit the prospective commission account and credit the agent's account with $18. Certain agents, as I understand it, had drawing accounts and it was a general practice of the company to give them a sufficient drawing account to live on, at least. If this drawing account were, say, $25 a week, and the agent during that week had
earned commissions amounting to $30, and had received
366 only the $25, he would have a balance of $5 owing him, which the company would pay him at his pleasure; but if his commissions in any particular week on sales amounted to less than $25, it would leave the agent owing the company, and that amount the company would expect to recover in the following weeks. If the agent left the company at that particular time when he owed the company, that amount would be a permanent debit balance, subject to any recovery that might be made thereon. We accepted the balances shown on the yearly statements, Plaintiff's Exhibits, 8 to 15, as actual assets and made no analysis to determine whether they were merely paper assets. I accepted the company's statements

and believe it is a reasonable assumption that if an item is included under a head there it is an asset of some form or other. In the year 1906 the amount of Agents' Debit Balances were $59,000 in round figures. In the next year, $66,000; in 1908, $126,000; in 1909, $98,000. As during 1909 the company wrote off $96,696.30 of the Agents' Accounts, this brought the resulting figure in 1909 to $98,000 in round figures. The net balance in 1910 was $108,000 in round figures. In 1910 the accounts of bad debts and agents' debit balances were combined. We regarded these two as one item. The amounts written off were, $30,000 in 1910, $27,377.75 in 1911, and $10,411 in the eight months period of 1912.

"We added to the Commercial and Selling Overhead an item of Accrued Wages, debited to the Surplus Account, $3,266.84 and taken from Exhibit No. 10. We assumed the figures on this yearly statement to be correct without making any independent investigation, and where adjustments were necessary to bring them in line with the books, these adjustments, more or less of a minor nature, were made.

"Referring now to the year 1911, the figures given in the yearly statement, Plaintiff's Exhibit No. 8, the Final Net Gain of $43,765.73, is shown on page 3 of that statement. On page 21 of my account, marked Exhibit 40, I have given as the net gain, before charging interest, $95,679.43. The first figure mentioned, $43,765.73, was the net gain on the entire business of the company—

367 while the figure of $95,679.43 I have set forth as the profits on cylinder scales alone for this year. The proportion of cylinder scales to fan scales sold in this year was 60%, so that of the figure of total net gain given in the statement for the year 1911, $43,765.73, 60% of that was to be used, according to that exhibit as showing the profit on cylinder scales, it would be about 24 or 25 thousand dollars. The item of $43,765.73 takes into consideration vulcanizing loss and several other items. There was a loss of $3,848.86 for the entire year on Vulcanizer business.

"I have assumed the figures on the yearly statement, Plaintiff's Exhibit No. 8 to be correct, and these give a profit of $13,000 in round numbers for the entire year. I have given a profit of $95,000 as the profits of cylinder scales alone, because the cylinder scales were an entirely different class of business. It is quite possible that no considerable money was made on the 40% of the business relating to fan scales. I am in no position to say whether it is not more possible that more money was made on fan scales which had been established for several years than on the newer device—the cylinder scale. I explained on cross examination the basis on which my statement was made up and assuming the correctness of the testimony reported this as my result. I have no reason to doubt but what the Plaintiff's Exhibit No. 8 is true, and assuming it to be true it is quite possible that the company may have lost a considerable amount of money on fan scales. It is impossible to tell from their system of bookkeeping whether they would lose money on fan scales. The reason why I could not determine the profit or loss on fan scales was that there was no record available as to the unit cost

of manufacturing fan scales. I inquired of the company for the cost records the first day I was in their office, and I found that they had no cost records, so that I could do nothing but abandon that research.

"For the manufacturing cost of cylinder scales we took the statement of Mr. Zolg—$14.86, or whatever figure of cost was stated. In certain instances, the cost was stated higher, and the unit cost was multiplied by the number of scales sold to ascertain the total cost of manufacture.

"Up to the time that the manufacture of cylinder scales was started, for which period we took trial balances of the company's business, my recollection is that these trial balances showed
368 a profit, at the time prior to the manufacture of cylinder scales.

"In preparing Basis No. 3, I have adjusted the figures given in Basis No. 1, by spreading over a period of five years certain of the accounts. I have the memoranda before me. These accounts were: Experimental, Advertising, Litigation, Patent Expense, and Branch Office Expense. I have never made an analysis of the Branch Office Account. I personally looked over several of these accounts, but I did not perpetuate the result of our investigation by any memorandum, as it would have been of no particular value, because the data supporting that account was not available, especially in the earlier years. This account was not different in this respect from other accounts, which we had analyzed, but the analysis, such as we could make was of very little value because we could not get the component items going into the account. The Branch Office Accounts which I personally examined were three or four of the larger ones; I think the offices were Chicago, New York and San Francisco. I have no very clear recollection of the particular items going into these accounts. I do know that the account represented the cost of operating the office.

That was a conclusion that I came to at that time. I do not know whether any other items than the mere cost of operating the offices entered into the accounts, having no definite information other than I have stated, and yet with this indefinite information I removed that amount as a charge in any particular year and spread it over five years. Any item of freight that would apply to the Toledo office is, in the first place, incorrectly included in this account and if included should have been absolved at once. No amount of trouble would have ascertained the information for want of data. The entry would take you to a folio page and then to a voucher if the voucher was produced. I do not recall any item of personal property taxes or any amount for license to do business for the current year in these office accounts, but such items would not have changed my basis of figuring at all.

Then follows testimony:

Q. I call your attention, Mr. Witness, to a question put to you as shown by the stenographic transcript on page 673: Q. Then
369 the total, including August 31st, 1912, is what? A. $459,-206.77. Q. That's for what business? A. The sale of cylinder scales in the United States."

If that is their total of cylinder sales in the United States, will you give the Master the total for sales in foreign countries?

A. The profit for sales in foreign countries?

Q. No, the figure that corresponds to this. (Reading to the witness the questions and answers just read from the transcript.)

Will you kindly tell the Master what the total sales were in foreign countries for that time?

A. I don't understand the question.

Q. You were present when Mr. Slater testified that he made this data and put figures down at your dictation?

A. I was.

Q. And he said that he kept a list of foreign sales?

A. Yes.

Q. Now, if that's the total for the year 1912 sales in the United States, what is the total of sales in foreign countries?

A. That is the total for sales in the United States.

Q. Then your statement in that regard was not true?

A. No, sir, my statement is perfectly true.

Q. Your statement is perfectly true?

A. Absolutely.

Q. Is the transcript correct?

A. I don't think you are reading the context. The foreign scales are included in that figure. I have made no distinction between scales sold in the United States and foreign countries.

"The total of those expense spread over five years, Experimental, Advertising, Litigation, Patent Expense and Branch Office Expense, for the year 1911 was $179,691.74. These divided up as follows:

Experimental	$11,926.75
Advertising	35,349.47
Litigation	1,681.86
Patent Expense	15,577.66
Branch Office expense	115,166.00

"For the year 1902 the aggregate of the items that were spread over five years was $5,279.55, composed of the accounts:

370	Advertising	$5,102.03
	Chicago Branch Office Expense	177.52

Then testimony as follows:

Q. Will you tell how much of that is experimental; have you not it on the memorandum before You?

A. It is on here, $11,926.75.

Q. How much Advertising?

A. $35,349.47.

Q. How much Litigation?

A. $1,681.86.

Q. How much Patent Expense?

A. $15,577.66.

Q. And how much Branch Office Expense?
A. $115,166 even.
Q. For the year 1902, will you turn back?
A. Yes.
Q. How much was the aggregate of those items or such items as corresponded to those?
A. $5,279.55.
Q. Five thousand and what?
A. —279.55.
Q. Composed of what?
A. Advertising, $5,102.03; Chicago Office Expense, $177.52.
Q. That's all?
A. That's all.
Q. Mr. Hall, did you make any investigation as to the cost of the patented device in this case?
Mr. Zane: We object. This is not cross examination.
Mr. Meads: That's what it purports to be an account of.

The Master: Objection overruled.
Mr. Zane: Exception.

A. No.

Mr. Meads:

Q. Do you know portion of the scale was covered by the patent alleged to have been infringed?
A. I do not.
Q. Did anybody direct your attention to the fact that it was merely the drum of the scale?
A. Yes.
Q. You knew that fact?
A. I knew the patent was in connection with the drum.

371 Q. From your investigations through the books of the company or from reading the data of Mr. Slater or from any other source did you ascertain that there were numerous patents covering other features of that scale?
A. I did not know that.
Q. How?
A. I did not know it, no sir.
Q. In looking over the patent account and looking over such data as you had did you discover that there were attorneys' fees and other things paid for other patents involved in the cylinder scale?
A. Well, there was considerable expense connected with patents, but as to the component items of that particular account I don't know.
Q. You did not make any attempt to find out, did you?
A. I made inquiry and the vouchers were not available.
Q. After the year 1910 was not every voucher available in that company's office?
A. Not to us.

The Master: That's clearly hearsay and I will sustain the motion.

Mr. Zane: Exception.

Mr. Meads:

Q. Now, Mr. Witness, confining your answers to information which you have directly, if you have any such information, do you know whether in this 6,000 pages of matter that you have taken off there is anywhere any analysis or statement of the cost of the drum of the plaintiff's cylinder scale?

A. There is not.

Q. Outside of the books of the defendant company did you make any investigation as to the cost of such a drum?

A. I did not.

Q. Did you attempt in any way to propertion the cost of the infringing drum to the cost of the entire scale?

A. I did not.

Q. Did you in any way attempt to proportion the number of patents involved in the drum to the number of patents covering other features of the scale?

A. I did not.

Q. You have assumed then in this account that all the profits, if any, upon the scale known as the cylinder scale manufac-
372 tured by the defendant were due to the plaintiff, have you?

Mr. Zane: We object. He has not assumed anything.

The fact about it is that his account is profits on cylinder scales. He can't pass on the legal question.

Mr. Meads: I have not asked him to.

(Question read)

The Master: Objection sustained.

Mr. Meads:

Q. Then I will put it this way: You have in this Exhibit 40 merely assembled what you believe to be the entire profits received by the Toledo Computing Scale Company on sales of cylinder scales?

A. That account shows what in my judgment represents the profit on manufacture and sales of cylinder scales subject to the qualifications mentioned in the report.

Q. Upon the entire scale?

A. Upon the entire scale.

Mr. Meads: That's all with this witness.

The Witness: I wish to amplify an answer made sometime ago to you in reference to freight on scales.

Mr. Meads: Well, your Honor, this is not responsive to my question and since I went out he has examined papers here.

(To the witness:) Is this in response to this question?

A. No.

The Master: If he wishes to make any further answer, I think the witness has that right.

"Referring again to the item 'Freight on Scales', entered on Branch Office Expense, a very plausible reason could be built up that freight may be on scales taken back in exchange for the purpose of developing the business. On the other hand, it may be ordinary freight. In the event of its being ordinary freight my original answer holds—that it is a charge to expense. In the event of its being freight on scales taken back to develop the business, it might very reasonably be deferred.

Redirect examination.

By Mr. Zane:

Q. You were present during the examination in Toledo, were you not?

A. Yes.

Q. Do you remember the testimony of any witness there
373 to the effect that the company had kept no cost figures at all?

A. Yes, there was testimony to that effect.

Q. Did you hear the testimony that the scale cost more to manufacture in 1911 and 1912 on account of the increase in cost of labor and material?

Mr. Meads: Now, your Honor please, I will have to object to that form of question to his own witness.

The Master: That may be answered yes or no. The question is whether he heard that testimony. Objection overruled.

A. I heard it.

Mr. Zane:

Q. Do you know of anything from which you could get their cost figures beyond the sworn statement put into this case by Mr. Zolg for the defendant?

A. No.

Q. So far as your information went do you know of any other means of obtaining it?

A. No.

"In our account, Basis No. 1, I disregard the cost of manufacture of the charge backs and returned cylinder scales, this Basis No. 1 being prepared upon the assumption that the books of the Toledo Scale Company show exactly the net number of scales sold. My reasons were that the books of the Toledo Company showed facts. Now, in 1906, 57 scales were sold originally, according to the books, two of the original scales came back and were presumably resold, making a net sale of 55 scales. That is all the company is entitled to for the cost of manufacture. It cannot be determined with accuracy, from the number of the scales, whether or not those scales that were returned were subsequently sold. This was the reason for Basis No. 2.

"Certain figures in the various Exhibits, 8 to 15, consisting of the annual statements of the business of the Toledo Scale Company had to be changed to correspond to the final entries on the books for the

year. We have used no corrected figures out of an exhibit unless it was corrected by the books. Some of our corrections were increases and some were decreases. For example, in Plaintiff's Exhibit No. 10, one of the items changed was a reduction in the Tools and Patterns account as shown on Exhibit No. 10. The Tools and Patterns Account was credited under date of December 31,
374 1910 with an item of $2,914.72, Inventory of Tools and Patterns at that date, and as shown on the Tools and Patterns Account of the books of the company. The same answer could apply with reference to our changes in Factory Supplies. The account was made what they finally showed it to be upon their books.

"In my direct examination I stated that I requested advice from counsel for the plaintiff in regard to the legal proposition as to whether the foreign scales were to be considered United States sales. If we were to exclude from our Basis No. 1 the foreign sales altogether, we would reduce our profit for the accounting period from $459,206.77 to $447,348.14. By years, this profit excluding foreign scales, commissions and expenses applying to those sales, would be for the year—

1906	$555.96

This is the same as in Basis No. 1.

1907	22,776.58
As against Basis No. 1 figure of	23,707.77
1908	55,540.57
As against Basis No. 1 figure of	58,543.49
1909	97,082.32
As against Basis No. 1 figure of	100,759.24
1910	101,723.78
As against Basis No. 1 figure of	106,194.93
1911	98,679.52
As against Basis No. 1 figure of	95,679.43
8 months of 1912	75,101.99
As against Basis No. 1 figure of	73,768.95

Then testimony as follows:

Q. Have you got those figures worked out there on the basis of including foreign sales and excluding commissions, just commissions returned?

A. Yes.

Q. Give us those figures?

A. For the year 1906, $555.96; for the year 1907, $22,776.58; for the year 1908, $55,540.55; for the year 1909, $97,082.32; for the year 1910, $106,054.41; for the year 1911, $101,467.16; eight months in 1912, $77,592.44; a total for the period of $461,059.92.

Q. What is the reason when you exclude foreign sales altogether in the last two years, 1911 and 1912, the profits are larger on the cylinder business?

A. Because the expense in those years, that is, the
375 commission—In the first place I should say that the selling price of the cylinder scales averaged very much more, the foreign cylinder scales averaged very much more than the scales sold in this country, in the United States, but the expense charged against that was the same, for instance, commissions was charged against it and general expense and the expenses on those scales amounted to more than the actual selling price of the scale.

Mr. Zane: I think that's all.

Recross-examination.

By Mr. Meads:

Q. Mr. Witness, in response to a question put to you by counsel on your last examination you said that cost figures were not obtainable anywhere except from Mr. Zolg. Was there any method in your mind as an expert accountant by which you could determine whether those cost figures as given by Mr. Zolg were reasonable or not?

A. It could not be determined at this date.

Q. Does any method suggest itself to you of checking Mr. Zolg's statement as to whether such a cost figure was excessive or not?

A. Mr. Zolg's figure could not be checked from the records of the Toledo Scale Company.

(Question read at direction of Mr. Meads.)

A. I stated that information could not be obtained from the records of the Toledo Scale Company.

"I know of no method by which we could determine whether those cost figures given by Mr. Zolg were reasonable or not, as that information could not be obtained from the records of the Toledo Scale Company. No other method occurs to me by which we could have determined whether the figures given by Mr. Zolg as to cost of these scales were excessive or not. I could not check Mr. Zolg's figures unless I got data from this particular scale company. I have never examined the scale which this was said to have infringed. I did not take the trouble to examine the drum of the plaintiff's scale here, and I have made no investigation as to the cost of the plaintiff's scale. I made investigation the first day I was in Toledo to ascertain
what information the company had relative to the cost of
376 manufacturing the scales and they told me they had nothing. If Mr. Zolg had put in his Account that the factory cost of these scales was $60 a scale, instead of $14.86, I would have assumed that statement to be correct and made all my accounting on that basis. I accepted Mr. Zolg's figures for what they were worth and had no reason to doubt that those figures are correct. We did not make any investigation at all outside of the Toledo factory as to the cost of fan scales. I knew that the plaintiff company in this case made fan scales, but I did not take the trouble of finding out what the approximate business in fan scales was. I realize that to properly

dissociate the cylinder scale business from the fan scale business, it would be necessary to determine the profit on the fan scales in bulk, and while I could not determine the profit on an individual fan scale unless I knew what the cost was, I could, in the aggregate, tell whether they were making or losing money on the scales by determining what the aggregate cost of manufacture was.

Then follows testimony:

Q. And from that aggregate cost of manufacture you did determine that they were making a profit on fan scales?

A. No.

Q. Have you any trial balances that show to the contrary?

A. The cost of the entire manufacture amounted to a certain figure to the Toledo Scale Company.

Q. Yes.

A. The cost of manufacture of cylinder scales as per the exhibit submitted was a certain other figure.

Q. Yes.

A. Take the second figure from the first the residual figure naturally applies to fan.

Q. Have you any trial balance or any other statement that shows that to have been a loss?

A. You can ascertain what it is by taking this profit from the actual profits they made.

Q. Yes, if you take your figures from the total profits of the company, it would show a tremendous loss on fan scales, would it not?

A. I would not say tremendous.

"In the year 1911 if we do not deduct interest charges
377 of $26,682.86 and Bond Interest, $1,750.04, and add these amounts to the net gain, $43,000, shown on the statement for 1911. Plaintiff's Exhibit No. 8, we place the account on a parity with the account submitted by me. The items of Interest and Bond Interest apply on the total business of the company.

"I prepared the figures used in my redirect examination as to foreign scales yesterday, and informed counsel for plaintiff this morning that I had prepared it. This memoranda was prepared after Exhibit 40 was prepared and since this examination was begun."

The instrument containing this memoranda was marked for identification Defendant's Exhibit No. 20.

Redirect examination.

By Mr. Zane:

"The figures for the fan losses by years are as follows:

For year ending Dec. 31, 1906, fan profit of.....	$33,603.78
For year ending Dec. 31, 1917, fan profit of.....	9,341.11
For year ending Dec. 31, 1908, fan loss of.....	6,367.36
For year ending Dec. 31, 1909, fan profit of.....	65,246.28
For year ending Dec. 31, 1910, fan loss of.....	33,997.35
For year ending Dec. 31, 1911, fan loss of.....	70,944.08
8 mos. ending August 31, 1912, fan loss of.....	32,247.31

These accounts have been prepared on the same basis as the accounting for the cylinder scales—that is, after excluding interest and applying Basis No. 1."

Recross-examination.

By Mr. Meads:

"If we were to add interest to those amounts for fan scales the losses would have been larger. For instance, in the year 1908, the interest paid was $9,671.85, of which approximately one-half would apply to fans. Accordingly the total loss for that year on fans would be increased by approximately one-half of the item of interest. The total loss in that year on fans would then be between eleven and twelve thousand dollars. In the year 1910, according to my statement, the company lost $33,997.35 on its fan scale business, and the total interest for that year was $24,149.42, of which about 40% would apply to fans. This would increase the loss on fan
378 scales about $9,600, or make a total loss for the year 1910 on fan scales of $44,000.

"In the year 1911 my figures showing the company's loss was $70,944.08 on the fan scale business. The interest paid that year amounted to $28,432.90, of which about 40% applied to fan scales. This would increase the loss on fan scales about $12,000 or bring the total loss for the year 1911 on fan scales to $83,000.

"In preparing this statement of the losses on fan scales, we had no unit cost for fan scales, but determined their cost in the aggregate from the books of the company by assuming the accuracy of the cost of cylinder scales, and taking the residual figure to be the cost of manufacture of fan scales.

Chicago, Monday, July 17, 1916.

Met pursuant to adjournment.

Present:

Messrs. Zane & Morse, for Complainant.
Messrs. Meads & Hibben, for Defendant.

GEORGE W. KEPLER, a witness on behalf of plaintiff, testified as follows:

Direct examination.

By Mr. Zane:

"I reside at Dayton, Ohio, and am General Manager for the Computing Scale Company of Dayton, Ohio. I have been in the employ of this company since September, 1894, with the exception of a period of ten months in 1906 and 1907.

"I know the cylinder scale made by the Dayton Company under the Smith Patents. I have a plate that was put on one of these

scales after the Dayton Company began to manufacture them under the Smith Patents. Said plate reads, "Patented September 3, 1895. Reissued April 28, 1896."

(Said plate was offered in evidence as Plaintiff's Exhibit No. 43.)

"This plate was put on the drum below the prices per pound, and faces the dealer. Through the large opening in the middle is seen the weight indications and through the slits, the price or value indications.

379 "The Dayton Company were not making cylinder scales when I first went with them, but began making them about 1899 or 1900. These plates have been manufactured for us by Shonk & Company of Maywood. Some were made at an earlier date by Savage & Company of New York City. This plate was taken from a scale built in 1902 and, so far as I know, those plates have been on the scales generally during the period of manufacture. The number of the scale from which this plate was taken is 97459, and it was shipped out on the 24th of July, 1902. The form of the plate has changed slightly since that time due to a change in the general construction of the machine, but the plate, so far as I know, has always borne the patent marks."

Cross-examination.

By Mr. Meads:

"I have been General Manager of the Computing Scale Company for a little over four years, and prior to that, 1907 to 1911, was Assistant General Manager. Before that I occupied various clerical positions in the employ of the company—Shipping Clerk, Head of Collection Department, Head of Service Department, General Utility Man. I was Foreman of the Assembling Room for a period of six months following the strike about 1899. This was the only time I was connected with the Manufacturing department, except in a general way. As Assistant General Manager I had authority to go through the plant and see everything that was going on. During the ten months in 1906 and 1907 in which I was not connected with the company, I was promoting a bank.

"I was with the Computing Scale Company in 1909 when they had their fire which destroyed their entire factory. This rendered the factory inoperative for a short time. We commenced to build scales the next day after the burning of the plant, but it took sixty days after the fire before we shipped out any scales.

"At the time I was foreman of the assembling room we were not making cylinder scales. I cannot remember any specific day or month or year in which I saw any plate on a cylinder scale that bore the words shown on the plate attached. There was a plate on the first scales that we had of the drum type that bore patent

380 dates. This plate read, 'Patented in 1895, reissued in 1896.' I think there was another date on it also, 1898. I do not believe there were any other patent dates on it. We placed that

plate on our scales when we acquired the rights to build the drum type of scale, about 1899 or 1900. That was on the scales we bought from the Boston Company. After we began manufacturing scales of the cylinder type, I cannot fix the date, year or month, on which I first saw a plate or this type. This particular plate was taken from a scale No. 97459, but I do not know what kind of plate was on No. 97460. I do not know who was the shipping clerk at the time this scale was shipped out in 1902. It may have been myself, but I cannot say positively. My statement as to the date it was shipped is predicated on something I read in the shipping records. I have no personal knowledge other than what our records show."

Redirect examination.

By Mr. Zane:

"After the Smith patents were bought, cylinder scales were made at the Smith factory in Saugatuck, Connecticut. When we took over the scale, we began numbering with the number 75,000 taking out blocks of perhaps 1,000, 2,000 or 5,000 numbers for the cylinder type of scales and then another block for other types of scales.

Recross-examination.

By Mr. Meads:

"On the serialization of our scales we began with the number 7,500 for cylinder scales, because we were approaching the number 7,500 in manufacture of our other scales, and in order to get a series for this cylinder scale, we started the number at 7,500. We probably then finished up the series prior to that date, and taking a thousand or two thousand or five thousand for the cylinder scales, we then started to number the beam scales in the 80 thousands.

"They continued to manufacture scales at Saugatuck, Connecticut until around the later part of 1911 or 1912, part of the scales were manufactured at Dayton, and part at Saugatuck up to 1911 and 1912."

381 Redirect examination.

By Mr. Zane:

"As Assistant General Manager and General Manager I kept track of the material furnished the Saugatuck factory for the manufacture of scales and of the number of scales manufactured, and approved the payments of the vouchers to Mr. Smith for labor. We furnished all the material to manufacture the scales and simply paid him the flate rate for the manufacture. The plates which we have referred to were made either by the firm at Maywood, Illinois, or by the firm at New York; to the best of my knowledge, Savage & Company of New York, and Shonk & Company of Maywood, have done all of that work for us. The scale is not complete until the plate goes on it."

GEORGE M. LUDLOW, a witness on behalf of plaintiff, testified as follows:

Direct examination.

By Mr. Zane:

"I am the president of the Moneyweight Scale Company and reside in Evanston, Illinois. I have had ocasion to examine the plates of the old scales of cylinder type. The oldest number I have examined is a scale over at our office, No. 97311. That has a plate on it similar to the one Mr. Kepler put in exhibit. It is marked, 'Patented September 3, 1895, reissued April 28, 1896, patented January 11, 1898, April 24, 1900, May 28, 1901, June 18, 1901.' I also have another scale, serial No. 147,037 which was received by the Moneyweight Scale Company prior to 1906 from the Computing Scale Company at Dayton. That has a plate on it reading, 'Patented September 3, 1895, reissued April 28, 1896, patented January 11, 1898, patented April 24, 1900, patented May 28, 1901, patented June 18, 1901. Other patents pending.' I also have another scale with exactly the same reading on the plate, scale No. 178,239. That was received prior to 1906. As I understand it, the numbers we received in 1906 were along in the 180 thousands. I have another scale of a later date having the same reading. I can recall of no scales shipped to us not marked. These
382 scales were shipped to us from Dayton, Ohio. The Moneyweight Scale Company is the selling organization for the greater part of the United States for the scales manufactured by the Computing Scale Company, of Dayton, Ohio."

Cross-examination.

By Mr. Meads:

"I have been president of the Moneyweight Scale Company for five or six years, and before that was Vice President since its organization in 1899 or 1900. While I was Vice President, the President was Mr. Canby of Dayton, Ohio. My position was an active one and our offices were in the Masonic Temple at Chicago up to two or three years ago, at which time we moved to Madison and Market.

"The Moneyweight Scale Company was the selling agent for the Computing Scale Company for about 90% of the United States, for a while, Ohio and California being excluded.

"When I say all of these scales were marked with a plate showing the patents, I do not know whether it included all of the patents involved in the scale. I am seeing scales every day, and I have no recollection of any scale we ever received that did not have patent dates and numbers on them, but as to whether the company had any other patents covering the features of the scale, I don't know. The dates opposite the words 'Patented, and Reissued' indicate the dates on which the patents were issued or reissued. These dates were taken from a pencil memorandum I hold in my hand.

I would not pretend from recollection to give the wording on all the scales I have seen. I thought a memorandum was a great deal better than my memory to depend upon.

Redirect examination.

By Mr. Zane:

"Not Mr. Canby but Mr. Ed Spear was president of the Moneyweight Company. He is now dead.

383 Recross-examination.

By Mr. Meads:

"Mr. Canby resides in Dayton, Ohio. He was president of the Computing Scale Company during most of that time and was a director of the Moneyweight Scale Company as well as a director of the Computing Scale Company, of which company I believe I also was a director. In a way the two companies were closely interwoven, the directors and officers being interlocked. So far as the management of the Dayton firm is concerned, except for certain financial questions we had nothing to do with it, and they had nothing to do with us, but the stock of both companies is owned and held by another company—The Computing Scale Company of America."

Then testimony as follows:

Mr. Zane: We next offer in evidence the original petition and notice entitled in this case, under the name of this case, filed June 25, 1912 in this court, subscribed in the name of the Toledo Computing Scale Company by Henry Theobald, president, sworn to on the 22nd day of June 1912, by the said Henry Theobald, together with the notice accompanying the same. There are particular parts we desire to draw attention to, but we offer the whole document in evidence as Plaintiff's Exhibit 44 (handing document to counsel for defendant).

In order that there may be no question, I offer this plate in evidence, Plaintiff's Exhibit 43.

Mr. Meads: If your Honor please, to the introduction of the instrument offered in evidence as Plaintiff's Exhibit 44 defendant objects. This is a petition for the stay of an injunction pending appeal in this case and a part of the pleadings in the case, but not evidence in the case.

Mr. Zane: It is sworn to and we assume that it states facts or Mr. Theobald would not have sworn to it.

Mr. Meads: If the object is to impeach Mr. Theobald, but as a pleading in the case we object to it.

The Master: Well, of course it is not offered as impeaching evidence because Mr. Theobald has not testified, but is offered as an admission by the president of the defendant company, and if that states facts that are material to the issue, why is it not competent as an admission?

384 Mr. Meads: Well, then, I think counsel ought to point out to the Master what facts he intends to prove by this.

Mr. Zane: It is all a statement of fact. In order to get this in the record, I will read it (reading).

(Discussion.)

The Master: I will overrule the objection.

(To Mr. Zane:) I assume it is your desire to copy it into the record.

Mr. Zane: Yes.

(Said petition and notice, so offered, received in evidence, marked Plaintiff's Exhibit 44, June 17, 1916, C. B. M. and are in the words and figures following:

In the United States District Court, Northern District of Illinois, Eastern Division.

In Equity.

No. 30024.

THE COMPUTING SCALE COMPANY, Complainant,

vs.

TOLEDO COMPUTING SCALE COMPANY, Defendant.

Petition.

To the Honorable the Judges of the United States District Court for the Eastern Division of the Northern District of Illinois:

Your petitioner, Toledo Computing Scale Company, defendant in the above entitled cause, respectfully represents and shows:

Th-t it is now and for more than ten years past has been engaged in the manufacture of computing scales at Toledo, Ohio, and in the sale of the same throughout the United States and various foreign countries. That it has upwards of one million dollars invested in its business, and net assets, over and above all liabilities, exceeding three quarters of a million dollars. That it has approximately four hundred employees in its factory at Toledo, and has upwards of sixty agencies in various parts of the country for the sale of
385 its scales, with more than two hundred and fifty salesmen devoting their time exclusively to the sale thereof.

That it began the manufacture and sale of the scales complained of in this case in the year 1906, and has continuously carried on their manufacture and sale in annually increasing numbers since said date, and that at the present time the manufacture and sale of said scales constitutes more than one-half of its entire business. That they have been sold and are now in use in every state and territory in the United States, and that more than a thousand of said scales are in

the hands of its agencies and salesmen throughout the country at the present time.

Your petitioner further represents and shows that soon after it began to place said scales extensively upon the market, to wit, in the month of March of the year 1907, the complainant in this case began two separate suits against your petitioner, in the United States Circuit Court at Toledo, Ohio, for alleged infringement of the same patents involved in this case, to wit, reissued letters patent No. 11536 and original letters patent No. 597,300. That your petitioner promptly filed its answers in said suits on May 6, 1907, and that said suits were put at issue by the filing of replications on June 3, 1907. That the complainant extensively advertised said suits throughout the United States, in the trade papers and by circulars and letters sent to thousands of purchasers and prospective purchasers of your petitioner's scales, but took no steps whatever toward prosecuting said suits or enforcing its alleged rights thereunder. That it never did make any move whatever toward the prosecution of said suits, but after they had been pending more than three years, to wit, on May 23, 1910, it brought the present suit against your petitioner, in this jurisdiction, for alleged infringement of the same patents. That your petitioner promptly filed its answer to the present suit, and that said suit was put at issue by the filing of a replication on or about August 29, 1910, but that complainant took no steps whatever toward the prosecution of said suit, until the following March, to wit, on or about March 15, 1911, when it applied to his Honor, Judge Kohlsaat, for an extension of time for the introduction of proofs. That your petitioner opposed said application, upon the ground that complainant then had two suits against your petitioner at To-
386 ledo for infringement of the same patents, which it had allowed to remain unprosecuted for more than four years, and that it had delayed the introduction of proofs in the suit in this jurisdiction for more than six months after said suit had been at issue; and that your petitioner therefore believed that said suits had not been brought in good faith or under the belief said patents were valid and had been infringed by your petitioner, but had been brought and had been used solely for advertising and commercial purposes. That his Honor, Judge Kohlsaat, nevertheless granted said application, upon the condition that complainant forthwith dismiss its aforesaid pending suits at Toledo, and close its opening proofs in the suit in this jurisdiction within thirty days, whereupon said two suits at Toledo, which had been pending unprosecuted for more than four years, were dismissed, and the prosecution of the suit in this jurisdiction begun.

Your petitioner further represents and shows that if said letters patent are valid and are infringed by your petitioner's scales, complainant made no effort whatsoever to enforce its rights thereunder against your petitioner, for more than five years after your petitioner began the manufacture and sale of its scales complained of in this suit, and that during said period your petitioner, being advised and believing that it was not violating any lawful rights of

complainant by the manufacture and sale of said scales, proceeded to and did invest a very large sum of money, to wit, more than a quarter of a million of dollars, in equipment for the manufacture and sale of said scales and in facilities for their distribution and sale, and has during said period built up a large and valuable business in the manufacture and sale of said scales, and that the manufacture and sale of said scales now constitutes an essential and vital part of defendant's business as a going concern.

Your petitioner further represents and shows that the reissued letters patent in suit in this cause expire by limitation on September 3, 1912, less than three months hence, so that the complainant, by its aforesaid conduct, has voluntarily allowed almost the entire term of said letters patent to expire without making any bona fide effort to assert and enforce its alleged rights thereunder.

387 Your petitioner further represents and shows that it is advised and believes that, notwithstanding the decree which has been awarded the complainant in this case, there is serious doubt respecting the validity of each of the two letters patent involved therein. That an appeal from said decree may be heard and determined at the October term, 1912, of the Court of Appeals for this circuit; that to allow the injunction against your petitioner, awarded by said decree, to go into force and effect, even until the expiration of the said reissued letters patent less than three months hence, would irreparably damage defendant's business as a going concern, without corresponding legitimate benefit to complainant; and that if said decree should be reversed by the Court of Appeals, and said letters patent were held invalid or not to be infringed by your petitioner's scales, your petitioner would be without remedy in the premises, and would suffer very great permanent loss.

Wherefore, the premises considered, your petitioner respectfully prays that the injunction awarded against it by the decree in this cause may be suspended by an order of this court until a hearing and determination of your petitioner's appeal from said decree.

TOLEDO COMPUTING SCALE COMPANY,
By HENRY THEOBALD,
President.

RECTOR, HIBBEN, DAVIS & MACAULEY,
Solicitors and Counsel for Petitioner.

388 STATE OF ILLINOIS,
County of Cook, ss:

Before me, the undersigned, a Notary Public, in and for Cook County, Illinois, this 22nd day of June, 1912, personally appeared Henry Theobald, personally known to me to be the President of the Toledo Computing Scale Company, the petitioner named in the foregoing petition, and executed the same in my presence, and made

oath that he had read the same, and knew the contents thereof, and that said petition was true.

[Seal of Robert Dobberman, Notary Public, Cook County, Illinois.]

ROBERT DOBBERMAN,
Notary Public, Cook County, Ill.

In the United States District Court, Northern District of Illinois, Eastern Division.

In Equity.

No. 30024.

THE COMPUTING SCALE COMPANY, Complainant,

vs.

TOLEDO COMPUTING SCALE COMPANY, Defendant.

Notice.

Messrs. Sheridan, Wilkinson, Scott & Richmond, Solicitors for Complainant.

GENTLEMEN:

Please take notice that on Monday, June 24th, 1912, at ten o'clock A. M. or as soon thereafter as counsel can be heard, before the Honorable Kenesaw M. Landis, Judge of United States District Court for the Northern District of Illinois, we shall present to the Court the accompanying petition for a suspension of the injunction
389 in said cause pending a hearing and determination of the appeal from the decree awarding said injunction.

RECTOR, HIBBEN, DAVIS & MACAULEY,
Solicitors for Defendant.

Received copies of the foregoing notice and of the petition mentioned therein this 22nd day of June, 1912.

SHERIDAN WILKINSON SCOTT & RICHMOND,
Solicitors for Complainant.

(Endorsed on back of said petition and notice:) No. 30024. United States District Court. Northern District Illinois. Eastern Division. The Computing Scale Co. vs. Toledo Computing Scale Co. In Equity. Petition and Notice.

(File mark stamped on back of said petition and notice:) Filed June 25, 1912, at — o'clock — M. T. C. MacMillan, Clerk.

Mr. Zane: Now, if your Honor please, that constitutes our prima facie case for the plaintiff.

Plaintiff rests.

The Master: I will enter an order that the defendant commence its case on the 16th of October, 1916.

390 *Defense.*

October 16, 1916.

On motion of defendants the case was continued until Thursday, October 26, 1916, at 10 A. M.

October 26, 1916.

Met pursuant to adjournment.

Present: Messrs. Hibben, Meads, Morse, Zane.

Mr. Hibben: If the Master please, understanding that complainant has closed its prima facie case, I wish to make a motion on behalf of the defendant.

I move the Master to find that there is nothing due from the defendant to this complainant on the following grounds:

First. That the complainant has not made a prima facie case on this accounting.

Second. That the complainant has failed to show that the defendant made any profit attributable to the invention of the claims of the patent in suit.

Three. That assuming that defendant made any profit at all on the scale as a whole, the complainant has failed to show that any such profit was attributable to the invention of the claims of the patent in suit.

Four. That assuming that defendant made any profit at all on the scale as a whole, the complainant has failed to show what portion, if any, of such profit is attributable to the invention of the claims of the patent in suit, or to show that such segregation is impossible within the limits of reasonable or approximate accuracy.

Five. That the complainant has failed to show that the entire marketable value of the scale as a whole was due to the embodiment therein of the invention of the claims of the patent in suit.

If your Honor please, we are prepared to argue this motion. I don't know whether you care to hear any argument now, or render a decision on it, or to reserve decision.

The Master: I will reserve any ruling on this motion for further consideration.

391 WILLIAM E. SEATREE, a witness called on behalf of defendant, testified as follows:

Direct examination.

By Mr. Meads:

"My place of business is in Chicago, Illinois, and I am a member of the firm of Price, Waterhouse & Co., Public Accountants, having offices in the Corn Exchange Bank Building. Our company has offices in the United States at New York, Boston, Philadelphia, Pittsburgh, Detroit, Chicago, Milwaukee, St. Louis, Los Angeles, San Francisco, Seattle, and in Canada at Toronto, Montreal, Vancouver and Winnepeg, and we have foreign offices and connections in England, France, Russia and South America.

"I have been an accountant for 23 years, serving my apprenticeship with a firm of chartered accountants in the north of England. During that period I took the three examinations requisite to becoming a member of the Institute of Chartered Accountants of England and Wales. After completing that service I went with one of the principal firms in the city of Manchester, with whom I remained for three years, during which time I made several visits to the United States as their representative. I then came to the firm of Price, Waterhouse & Co. in the spring of 1902, and was with them as manager for four years, when I became a member of the firm. I have been a member of their firm for the past ten years. The general character of the business that I have transacted has been that of investigations of accounts and account matters pertaining to almost all kinds of businesses. My experience has been extremely broad and comprehensive in its character including investigations for a variety of purposes, as, for example, from regular financial audits, investigations for financial purposes, such as issues of securities, investigations into causes of falling off in profits or other internal matters of corporations, investigations for litigation coming under patent infringements or disputes, contracts of employment where the necessity of ascertaining profits is an important factor, etc.

"I have recently made an investigation of the profits and losses of the Toledo Scale Company in the manufacture and sale of its
392 product. Some three months ago I received a call from Mr. Hibben with a view to his client retaining the services of my firm for the purpose of investigating the profits of the Toledo Scale Company with reference to the manufacture and sale of cylinder and fan scales, in connection with the present litigation. Later I had an interview with Mr. Meads, Mr. Zolg and Mr. Hibben. As a result of this interview, I was retained to examine carefully and study the accounting which has been submitted in the present hearing as made by Marwick, Mitchell, Peat & Company, with a view to seeing whether or not it was calculated to be a true representation of the profits of the scale business or as to whether or not there were any flaws in it, or any matters dealth with, which were a matter of opinion and which might be dealt with differently. A copy of this

accounting was left with me to examine, and I spent considerable time going over it thoroughly. I was also given a copy of the testimony of Mr. Hall, the resident member of that firm, and of Mr. Slater, his assistant, which I carefully perused. I then interviewed Mr. Zolg for the purpose of taking up certain questions which had presented themselves in connection with the accounting and for the purpose of obtaining specific information as to those points which occurred to me.

"As a result of that interview I arranged to proceed with a detailed investigation of the account for the year 1911, for the purpose of ascertaining the profit or loss on the cylinder and fan scales division of the business from an absolutely impartial standpoint. I thought a good deal of time could be saved and the work expedited by obtaining access to the records and working papers of Marwick, Mitchell, Peat & Company, and accordingly took up the matter with Mr. Hibben, to see if that could be arranged, and as a matter of courtesy they extended to us the privilege of examining certain of their working papers and documents, which we did in their offices. I had a representative there for about a week, who obtained certain information which was of service to us, and which we used. I then sent a representative, Mr. J. A. Bowman, to Toledo for the purpose of continuing the investigation and obtaining detailed information which we were not able to obtain from the working papers of Marwick, Mitchell, Peat & Company. He continued this detailed investigation
393 at Toledo under my directions and general supervision for a period of four or five weeks, during which time he had some five or six—and at one time, I think, nine—assistants working with him, under his instructions and directions.

"I visited Toledo during the course of that work on one or two occasions, and when the investigation was brought to a conclusion I spent, I think, two or three days there, bringing the figures together and compiling statements which were later completed in our own office in Chicago. The results of our investigation are available now for the benefit of the Master. Our men returned from Toledo a week ago last Sunday, the 15th of October."

'Counsel for defendant here presented a document entitled, "Toledo Scale Company, Statement of Profit and Loss for the Year Ending December 31, 1911," which was marked for identification, Defendant's Exhibit 21.

"This statement of profit and loss for the year 1911, was prepared by myself in conjunction with my assistant, Mr. Bowman, who is now present in the court room.

"This statement is divided into three parts, called Exhibits 1, 2 and 3, and Exhibit 1 is entitled, 'Statement of Profit and Loss Account for year ending December 31, 1911. Divided as between cylinder and fan scale business on the basis of an actual allotment to the respective businesses in cylinder and fan scales, of all expenses and losses directly chargeable to one or the other, as determined by a detailed analysis of the account by Price, Waterhouse & Co., adjusted in respect of losses on agents' accounts to introduce an allowance (equivalent to three per cent of the gross sales) sufficient to

cover the losses incurred and advances made during the year 1911 and to allow for interest on the capital invested in the business at the rate of five per cent per annum."

"On the first page of this Exhibit, the first column is headed, Description, the second column, New Cylinder Scale Business, the third column, New Fan Scale Business, and the fourth column, Business in Second Hand, Repossessed and otherwise used Scales—all makes.

"In the first column appear in red the words, 'Number of Scales Shipped and Sold,' and under the column marked, 'Revenues,' appear in red the figures 5,297, the number of new cylinder
394 scales shipped and sold in the year 1911, and the figure 8,453, the number of new fan scales sold during that year. We obtained that information from the working papers of M. M. P. & Co. supplemented by the books and records of Toledo Scale Company, taking it, in the first instance from the books and papers of M. M. P. & Co., and checked them with the books of the Toledo Company. We made certain adjustments, the details of which we will furnish. We have a compilation which shows where these adjustments were made, entitled, "Toledo Scale Company, Memoranda of differences in profits and loss accounts year ending December 31, 1911, of cylinder scale business as reported by M. M. P. & Co., and Price, Waterhouse & Co., respectively."

(This compilation was here marked Defendant's Exhibit No. 22.)

"These adjustments are shown on pages 2 to 13, inclusive, of this Exhibit No. 22. On page 2, the number of scales sold as reported by M. M. P. & Co. were cylinder scales, 5,329 for the money value of $803,657.26, while the number of cylinder scales shown by us after adjustment were 5,297 for the money value of $800,554.02. The detail sheets of these adjustments are in the possession of my assistant, Mr. Bowman, who is now in court.

"Returning to Exhibit No. 21, the next item is, 'Gross Sales Value, Approximate List Prices, $800,554.02.' That is the adjusted value just referred to on the Defendant's Exhibit 22, page 2. The next item in the column marked 'New Cylinder Scale Business,' in the Exhibit No. 21, is "Number of Scales shipped and sold,' under the head of, 'Scales Returned, Pulled, Repossessed or Order Cancelled, 665.' This information was obtained from the working papers and reports submitted in court by M. M. P. & Co., supplemented by our investigation of the books and accounts at Toledo. The adjustment of the number of scales repossessed or pulled, etc., is shown on pages 3, 4 and 5 of the Exhibit referred to as Defendant's Exhibit 22. The adjustment show- on those pages bring the number of scales repossessed, from 654 to 665, and the total value from $77,985.87 to $93,386.17, which is the amount on page 1 of Defendant's Exhibit 22. We made these adjustments on scales repossessed after an actual analysis of the books. This analysis was made under by di-
395 rection, though I personally did not make it, but I passed on the respective adjustments as a matter of theory or a matter of principle, deciding whether or not these were proper adjustments of this particular account before they were finally entered.

"The next item under the head of Revenues, under the 'New Cylinder Scale Business,' is Gross Sales Value as Originally billed $93,386.17. That is the equivalent amount of money of the Charge-backs, as reported by M. M. P. & Co., and adjusted as set forth in the statement on pages 3 to 5 of Defendant's Exhibit 22. In other words, we started with the premise of $77,985.87 for the 654 scales reported by M. M. P. & Co., and adjusted these to the actual number, 665, and the amount, $93,386.17.

"The next item in the column marked Revenues, is 'Balances, being net firm sales, viz: Number of Scales, 4632.' This number is obtained by deducting the 665 from 5297, the gross scale sales. Similarly, the gross sales value becomes $707,167.85.

"The next item in the first column is 'Deductions from Gross Sales Value of Firm Sales,' viz: from list prices, price allowances on scales sold in trade for old scales taken in, charged according to the amounts actually allowed, on each scale sold, on Toledo Scales taken in, $23,-631.03. We got that figure from the books and records of the company at Toledo. It was an actual analysis of them, not an approximation; on scales of other makes taken in, $84,793.27 from the same source; other special allowances, which, according to the amount actually allowed on each scale sold, $8,774.18, from the books and records of the company at Toledo. This makes a total deduction from gross sales valuation specifically charged of $117,198.48, the total of the last three items.

"When I use the term 'Firm Sale' I mean the scales that stay put—those which do not come back, or are not repossessed. These items, totaling $117,198.48, were made from an actual analysis of the books and supporting records. There was an amount, a relatively small amount, of these total allowances, comprising allowances on Toledo Scales, scales of other makes and special allowances, which we were not able to allocate by analysis. This amount was $874.65,
and I divided that as between the second hand, fan and
396 cylinder business on the basis of the specifically allocated
amounts. In other words, I allowed it to follow the specifically allocated amounts in the same ratio. The total amount of allowances under the three headings was $151,370.90, of which we were able to specifically allocate $150,495.25, and the remainder, $874.65 we pro rated. Of this pro rated amount we gave to cylinder scales $686.58, being the proportion of the entire amount that the allowances on cylinder scales of $117,198.48 bears to the total allocated amount, $150,495.25.

"Deducting this amount of allowances, $117,885.06 from our gross sales value for cylinder scales, we arrive at the next figure of $589,-282.79. Adjacent to this figure is, in red, 'Percentage to net sales, 16.67%.' This is the percentage obtained by dividing the $707,-167.85 sales into $117,885.06 allowances.

"Under the head of, 'Manufacturing Cost and Commercial Expenses,' in the first column of Exhibit No. 21 is, 'Factory cost respectively of firm new scale sales, and of repossessed scales sold as second hand or used, viz: estimated cost of each scale sold furnished by the company including factory overhead expense—$124,068.65.'

We obtained this figure from the report of M. M. P. Co., supplemented by an examination of the books, which necessitated a slight adjustment of their figure. These adjustments are shown on page 11 of the statement entitled Defendant's Exhibit 22. The item of $74,151.95, the cost of cylinder scales as reported by M. M. P. Co. was the starting point and their labor and material overhead expenses based on 80.17% of the combined labor and material, amounting to $59,447.52. We then made our adjustments referred to on page 11 and brought the cost of cylinder scales to $143,067.84. That is the total of the $124,068.65 previously referred to and the $18,999.19 which was arrived at by deduction in this way: I ascertained what was the actual money spent on manufacturing the combined scales, cylinders, fans, etc.,—the actual money that had been expended and was so recorded on the books, and after allowing for inventory variations at the beginning and end which had to be taken into account—it left the actual amount of money representing the manufacturing outlays by the Toledo Scale Company. I then compared that total with the material and labor and overhead
397 costs as estimated, of the cylinder and fan scales respectively; the cylinder scales figure being taken from the M. M. P. Co. report as here shown, subject to these slight adjustments, and the fan scale costs of the same kind being also totaled.

"In other words, so many scales were shown as manufactured and sold, and this number multiplied by those estimated costs gave a sum of money, which represented the aggregate amount of the estimated manufacturing cost of cylinder and fan scales combined. This should, of course, agree with the actual amount of money spent as shown on the books. However, it fell short of that amount by the sum of $37,734.98—which showed clearly that the estimate which had been used in figuring the detailed items understated the actual cost. I divided that $37,734.98 between the fan scale business and the cylinder scale business on the basis that the total estimated cost of each kind of scale bore to the sum of the two costs, that is, I apportioned that difference of $37,734.98 in the ratio that the cost of fan and cylinder scales, respectively, bore to the aggregate sum of the costs of both.

Then follows:

Mr. Zane: Here, if your Honor please, I want to interpose an objection. He speaks of the costs put into this case and sworn to in the account of the defendant as estimated cost. Your Honor will recall the account for the defendant put in by Mr. Zolg in which he stated the cost of the scales, and that was a sworn account filed on behalf of the defendant. Now, the fact is that that figure is binding on them. They cannot by means of an expert witness later come in and attempt to add to the cost which they have put in and solemnly sworn to, which has become a pleading in the case, by which they are bound. That is the objection I want to make here to this testimony.

Mr. Meads: Well, the answer to that is very obvious. They have given as near as they can an estimated cost, a factory cost. This witness testified that taking that estimated cost both in fan and

cylinder business, and multiplying it by the number of scales shows a difference between what they actually expended and this figure.

Mr. Zane: That does not meet the case at all. They have not shown any estimated cost of fan scales. That is out of the
398 case entirely. They have not only put in that account, but they have gotten on the stand and sworn that that cost is correct, that that cost is made up by their own people from an investigation of their books, and that cost is arrived at as the proper and legitimate cost of the cylinder scales for the year 1911, for each cylinder scale. Now then, having made that statement and having put it into the case as the account of the defendant they seek to go now by this witness and say that because he finds the total cost of all scales to be a larger figure than the estimated cost of cylinder scales joined with the estimated cost of fan scales, which is not in the case at all, he has therefore arbitrarily elevated the cost price of the scale.

The Master: Does not your objection go more to the weight of this testimony than to its competency?

Mr. Zane: No, there is a case on accounting which says that they are bound by the figure of cost they put in in their account. They are bound by it. It is not a case of going to the weight of the testimony. They having put it in are bound by it. They cannot go back of it. Your Honor can see that on any other basis you would never get at the end of an accounting.

The Master: The objection was to the answer, was it not?

Mr. Zane: Yes, and motion to strike out.

The Master: I will take the testimony subject to the objection and motion.

"Adding this proportion of the actual cost to the estimated costs brings the total cost for cylinder scales to $143,067.84.

"The next item in red is the percentage to net sales, which is obtained by dividing the net firm sales of $707,167.85 into the cost figure, $143,067.84.

"The next item, Agents' and Managers' Commissions, entered during the year, exclusive of commissions on forfeited installments or repossessed scales, proportion charged according to the amount actually credited on each transaction, $188,229.85. This figure was obtained by detailed analysis of the books and supplemental records. It is actual and not approximate. The total amount of commissions entered for the year 1911 was $348,910.16, of which we allocated all but $1,315.98. We allocated $347,594.18 out of $348,910.16. We specifically traced each item of commissions for the amount
399 of $347,594.18, but for the small amount $1,315.98 we could not find vouchers at our disposal. This amount, $1,315.98, was prorated in accordance with the specifically allocated items. In that way we arrived at our figure $712.09 as apportioned by cylinder scales.

"The next item is one in red—the proportion to net sales of total agents' commissions, 26.718%. We arrived at this percentage by dividing the net firm sales, $707,167.85 into the total commissions $188,229.85 charged to the new cylinder scale business.

"The next item is 'Losses on Agents' and Customers' Accounts,'

prorated on the basis of gross sales, $24,016.62. That is an allowance that is not in the books and it is calculated at the rate of 3% of the gross sales. We took the figure 3% for the following reason: I endeavored to find out as near as I could what would be a fair measure of losses under the heading, 'agents' advances or balances for the year 1911.' I realized that you could not take a substantial percentage of the accumulated balances because they are related to the back years, so I took each agent's account in turn. Those which showed a credit balance as money being due to him for commission already earned, of course I ignored.

We were considering those which showed debit balances, which means that the agent had received his advances, and these were to be later liquidated out of his commissions. Where the prospective commissions fell short of the amount of the advances, and the advances had been made in the year 1911, we made a statement of such items, and totaled them, and found what they approximated. In some instances, where the account was not fully covered by prospective commissions but the officials recalled as we were going through these accounts that later the man made good, we considered such accounts as good ones. On the bad accounts, we took the amount of advances which were made in cash during the year 1911 and were not covered by any commissions, as being approximately the amount that was bad during the year 1911. I tested to see how this compared, and it came so close to 3% of the gross sales that I used 3% of the gross sales as a matter of convenience in apportioning the amount. This figure, 3%, was also used by M. M. P. Co. for losses on Agents' Accounts, but they figured it on net sales and I think they
400 arrived at their conclusion in a slightly different way. The difference between us apparently is merely the equivalent of 3% of the difference between the gross and the net sales, ours being computed on 3% of the gross sales, and theirs on 3% of the net sales.

"The next item, 'Administration and General Expense, pro rated on basis of gross sales, $226.045.27.' We obtained this figure primarily from the books; that is, we ascertained what the total commercial and selling expenses were as shown by the books and found certain adjustments therein were necessary, as shown on page- 12 and 13 of the Defendant's Exhibit No. 22. I may say that the adjustments entered in those cases are the counterpart of the adjustments made in some of the other accounts. We found an item, for instance, in one account which did not belong there, and it being a commercial expense, we transferred it over to where it did belong. Having obtained the aggregate amount of commercial and selling expenses, $403,940.80, we pro rated that over cylinder, fan and second hand scales, respectively, on the basis of the gross sales. In that way we charged 55.96% of the amount to new cylinder scale business, which compares with the amount that M. M. P. Co. charged, of 60.40% shown by their statement. In this particular division we allowed an amount less than did M. M. P. Co., the difference arising from the fact that we charged a part of the expense to the second hand business, which they did not do. They charged it

all to either cylinder or fan scales, whereas we threw part of it over to second hand.

"On page 2 of Defendant's Exhibit No. 21, there is an item, 'Loss on Sale of Second Hand and Repossessed or otherwise used Scales, pro rated between cylinder and fan scale business on the total number of old units contributed by each.' You will see from the statement I have treated the business in second hand, repossessed, etc. scales as a department by itself, and the result of the business in second hand scales, that is to say, the difference between the revenue and cost and expenses was a loss on the second hand scale business of $1,827.45, which I have apportioned back to new cylinder and fan scale business. We apportioned this loss on the basis of units contributed as the result of sales of new cylinder scales and sales
401 of new fan scales rather than on the amount of such business. I can explain that as follows: In a business of this kind, which is similar to many other businesses, the second hand end of it is a necessary incident. In selling their scales they have to take old ones back, or it frequently happens that they repossess, or what is called "pull" their own scales that have been sold, and they have been relegated to the second hand scales and are so sold. When those scales come in, some of the company's make and some of other makes, whether they be cylinders or fans, they invariably lose their identity and they go through a refinishing department and they are just sold for what they can get for them. It is all an incident of the new business, and consequently, if it is a profit it is necessarily a salvage, which would be a proper credit to the cylinder and fan business, or if it was a loss it would be correspondingly a charge to these two departments. The problem and the difficulty involved in disposing of the outcome of this second hand business was one that caused me a great deal of careful consideration. It might be claimed that they could be apportioned on the basis of the gross sales. I found then that to do that would operate manifestly an injustice to the new cylinder business because if it were done on gross sales, I would have to charge 8/13 to new cylinder scales as compared with 5/13 to fan scales.

"Moreover, the principal governing factor that I had in mind was that the intrinsic value of the new scale had absolutely no relation whatever to the value of the old scale they get back. They take back this old scale, whatever condition it is in, and make varying allowances, which have no relation whatever to the intrinsic value of the old scale. In fact, my experience in this and allied businesses shows that, for instance, a man might have an old Dayton Scale and if he could buy a high priced scale they would give him one allowance; if he is going to buy a low priced cylinder scale they would give him another allowance for exactly the same thing and the same principle would apply if he took a high priced or a low priced fan scale.

"In other words, the value of that old article that comes back has no relation whatever to the allowance made for it, nor has it
402 any relation whatever to the value of the new scale sold. Therefore, I concluded it would be a manifest injustice to

apportion them on the basis of gross sales, and as it was necessary to apportion them on some basis it seemed to me the most equitable way was to regard it from this standpoint—that here we have a second hand business which is an incident of the new business and results entirely from the units of old stock contributed. Sometimes there are two or three old scales taken back on one new one so that when I say units I mean the old scales that come back, some of which are scrapped and are not sold again, and others of them are sold, some are refinished, some sold in one condition and some in another, but at the time the original sale is made they do not always know what is to be done, and, as I said before, inasmuch as the intrinsic value has no*t* relation whatever to the sale, it simply means that out of a large number of units we get a certain net revenue after we have paid all our expense out of it, and therefore it seemed to me that the logical way to distribute that result was on the basis of the number of units that had been contributed as a result of cylinder sales and the number of units that had been contributed as the result of fan scales. By units of scales I mean the single old scale taken back. Following that method of distribution then, of this total loss of $1,827.45 on the second hand business, I charged the cylinder scales with $1,168.25.

"The next item under the head of New Cylinder Scale Business is, 'Interest on capital invested in domestic and foreign business, viz.: excluding investment in Canadian and Vulcanizing business, at the rate of five per cent per annum divided as between the cylinder and fan scale business on the basis of gross sales.

"We computed interest on $1,000,000 as representing the investment in the year 1911 in the cylinder and fan scale business. That is, the investment exclusive of the Canadian business is about $1,000,000.00, and the interest is 5 per cent thereon and amounts to $50,000. The $50,000 was apportioned between the new cylinder scale business and the new fan scale business on the basis of gross sales. We obtained the figure $1,000,000 for the capital invested, thus: I took the total investment in property, plants, inventories, receivables and all the varying and current assets less the
403 amount outstanding for current liabilities. In other words, I got the net investment in the business irrespective of the source from which that investment—I mean from which that capital—was supplied. Some of the capital was supplied from common stock. Some of it was in the form of bonds and some in the form of bank loans. Some of it from preferred stock. Some from accumulated surplus, but it was all capital invested in the business during the year 1911. The figures in round numbers equaled $1,121,200. Inasmuch as the Canadian business profits were excluded from this account, and the vulcanizing business losses and profits were also excluded, I deducted from that the sum of $121,200 as representing the approximate investment of the Canadian and vulcanizing business. I just happened to approximate that, and I used $1,000,000 as the remaining capital invested in the domestic and foreign scale business. In determining that $121,200 was the approximate investment in the Canadian and Vulcanizing business

I referred to the company's books and secured the figures for equipment, inventories, etc., in the Canadian business, and also took the inventory that was in use for the vulcanizing business. Those sums approximated, I think, about $119,000 or $120,000, so I called it the odd sum of $121,200, leaving the investment for the United States and foreign business at an even figure of $1,000,000. The interest on this amount at 5%, $50,000, was apportioned between the fan and cylinder scales on the basis of gross sales.

"The next item in the first column is Miscellaneous Charges or Credits, $10, under the head of 'New Cylinder Scale Business,' that was an item that was transferred and closed that we came across in analyzing the account, and found it didn't have any relation there. As I recall it, it related to some old account back in 1910 or something. It was an allowance. I consequently threw it out of the curent year's sales—just treated it as a miscellaneous charges.

"The total cost and expense for the new cylinder scale business thus becomes $613,599.42.

"The total revenue from the cylinder business has been shown as $589,282.79.

"The net loss on the cylinder scale business for the year
404 1911 is $24,316.33—which is equivalent to $3.438% of the net sales.

"On page 1 of Defendant's Exhibit 21, under the column 'New Fan Scale Business', the figure 8,453, which is the number of fan scales shipped and sold, was obtained from the working papers of M. M. P. Co., supplemented by the books and records at Toledo. The amount—$518,320.57—was obtained from the same source. Similarly, the number—810—and the amount—$59,168.45—for scales pulled, repossessed, orders canceled, etc., was obtained from the working papers, supplemented by our investigation of the books and accounts at Toledo. The net number of scales is obtained by subtracting the scales pulled from scales shipped and the gross sales value, $459,152.12, was obtained by subtracting the value of repossessed scales from that of gross sales as first given.

"The next three items, the first being, 'Deductions from gross sales, price allowances on scales sold in trade for old scales taken in, charged according to the amount actually determined on each scale sold, $3,571.44;' the next item, being 'Allowance on scales of other makes taken in, $15,580.18', and the third item, 'Special allowances, $12,564.73'. These figures were obtained as the result of a detailed analysis of the books of the company, so that the total deductions from the gross sales, $31,716.35, is a specific figure actually determined from a detailed analysis. We added to this specifically allocated figure the sum of $180.40 as the pro rated proportion of the unallocated allowances to be charged to the new fan scale business and based on the amount of allowances actually charged. This brings that total figure for allowances to $31,896.75, which is used to determine the percentage proportion of net sales by dividing the number of gross sales into this figure.

"The total net revenue from new fan scales thus becomes $127,255.37.

"The estimated cost of scales sold was obtained from the cost records of the Company's office at Toledo. When I say the cost records, perhaps I should say it was a cost book, to be more accurate. I don't say I saw it. Mr. Bowman saw it, but it was taken from the costs furnished by the cost book supplemented by information
405 by two of the company's officials, I think the superintendent, Mr. Reeves, was one, and I don't recall the name of the other, at present.

Then testimony as follows:

Mr. Zane: I object to this, because it appears that they are working into their accounts not matter that comes from the books or not matter that testified to by any witness, but information which they have gotten, which is hearsay. That, of course, is destructive of their whole account. He says he got information from the Company's officials as to costs.

The Master: This witness is stating the theory and method that was pursued in the making of this account. He is not the person who did the major portion of the actual figuring out and of gathering information. I think they have a right to show how their account was made up. It may turn out that, as you suggest, that there are defects in it that may render a portion or all of the account inalid, but I think they have a right to show how their account was made up first from this witness. The theory of it. And as far as he has positive knowledge of any fact or transaction, of course, he is competent to testify to that. But he laid out this work on a plan, and he knows how this was made up.

Mr. Meads: In that connection, if the Master please, verifying what the Court has said, you remember the testimony by Mr. Hall that where he could not find the price of a particular scale he took one the nearest to that, and I suppose that is what this man did, where he could not find the cost of a particular model he took one nearest to it.

Mr. Zane: The accounts of 1911 are down in your account by Zolg. I do not know why you want to make him out a perjurer.

The Witness: I was about to say, supplemented by information furnished by two of the officials, one of whom was the superintendent.

Mr. Zane:

Q. What is his name?
A. Mr. Reeves, I think it is.
Q. And who was the other?

Mr. Bowman: Mr. Mould.

A. And the kind of information they furnished if it please the Master, was where there were no——

406 Mr. Zane:

Q. Was this furnished to you? Did you hear it?

A. Yes, it was across the table. Mr. Bowman was doing the work with them sitting at one side of the table and I happened to be working on another side of him immediately across the table, and I heard it.

Mr. Zane: We object to what information he was furnished by them. We can put this man on the stand.

The Master: I am not passing now on the weight of this testimony.

Mr. Zane: We are objecting to its competency. It is hearsay. It is introducing unsworn testimony into the case.

The Master: It is simply telling how this account was made up.

Mr. Zane: Exactly. He has told how, but he cannot go on and tell what he was told. He was told how. That is based on hearsay as far as this is concerned. Now then, they want to go on and ask him to put in the hearsay. The fact as to how the account is made up is complete. They are not entitled then in order to go further and lug in hearsay by showing what was said. That is the point I made.

The Master: I do not know that it is competent to give a mere conversation, but I would like to have this witness describe just what he means by getting information across the table there, whether it was something said by these parties whom you mentioned, your associates, or whether it was a paper or document produced.

Q. Describe the character of the information as communicated to your assistant there.

A. I was about to say that the kind of information that these individuals gave in supplementing the record——

Q. What was the kind they gave, or was it by word of mouth?

A. No, the account was in cases where they had no record of a cost of a particular type of scale, these individuals gave the information as to how much of a difference of cost valuation should be added or deducted from the nearest scale to it, because of some little additional equipment, perhaps to the scale or something like
407 that, and they furnished the practical information as to the differences.

Mr. Zane: Now, the point we make is this: That those two witnesses have been on the stand. They have sworn they had no cost books or no way of approximating the costs, and then they have put in an account here s-earing to what the cost is, the thing they are bound by. Now, at this time they come in and do not even produce the witnesses, but produce this man to swear to hearsay. The men do not dare go on the stand, but he is to swear to what they told him.

Mr. Meads: Why do you say the men do not go on the stand? We have just begun our side of the case. The men will be on the

stand, if the Master please. This is the first day that we have offered any testimony in this case.

Mr. Zane: Why don't you put them on?

Mr. Meads: We cannot do it all at once.

The Master: This witness is not pretending to testify to the truth or falsity of what these men said to him, but he is simply describing the sources of information from which this report that they are presenting here was made.

Mr. Zane: That is all, Judge.

The Master: Yes.

Mr. Zane: But he has gone further. He has told what they told him.

Mr. Meads: Oh, no, he has not. He has just told the character of the information. He has not attempted to say Reeves told me so and so, Mould told me.

The Master: I do not think that he attempted to give the conversation between these gentlemen.

Mr. Zane: No, but he has told the substance of it.

The Master: I asked him to describe the character of the information that was furnished. I think that is as far as he has gone. Now, as I have said, this witness is not pretending to state whether what these men said was true or not. He is simply telling what information he acted upon. An objection later on when this report is offered on that question must be entitled to consideration.

Mr. Zane: I understand they say they are going to put
408 Reeves and Mould on the stand. If that is the case we can examine them when it comes to that.

Mr. Meads: Of course. This is our first witness, if your Honor please.

Mr. Zane: We want to see Reeves and Mould on the stand. I am glad you have said you are going to put them on.

"That is the way we arrived at the item of $122,349.92. The detail sheets of that investigation Mr. Bowman now has.

"The next item is the amount by which the actual cost in the aggregate exceeded the aggregate estimated cost pro rated on the basis of the estimated cost as above, $18,735.79, was obtained, as I have testified, by taking that $37,000 plus which was actually expended, and dividing it between the cylinder and fan scales on the basis of this estimated cost. This brings the total of factory costs on new fan scales to $141,085.71.

"The percentage of 30.727 was obtained by dividing the net fan sales, $459,152.12, into the total cost, $141,085.71, giving the resultant percentage.

"The next item, 'Agents' and Managers' Commissions, exclusive of the commissions on forfeited installments of possessed scales,' proportion charged according to the amount actually credited on each transaction, amounts to $130,680.38. We obtained this figure by a detailed analysis of the books and records. I added to that the next item, the specific distribution of which could not be traced. I di-

vided the total amount not traced between the new cylinder, fan and second-hand scale businesses on the basis of those that I did trace—in other words, as I call it, allocated it. Allocated items were $130,680.38, and unallocated $495.30.

"The next item, 'Losses on Agents and Customers' Accounts, $15,549.62,' pro rated on the basis of gross sales, is an item which does not appear on the books, but represents an allowance equivalent to 3% of the gross amount of the new fan and cylinder scale business. The other expense item in the third column on page 1 of this Exhibit is 'All other commercial expense, viz.: administration and general expenses, pro rated on the basis of gross sales, $146,347.75.'

409 This is the proportion chargeable to fan scale business of the total commercial and selling expenses as shown on the books and adjusted as shown on pages 12 and 13 of the Defendant's Exhibit 22. The percentage of the total amount applicable to fan scales equals 36.23%. The figure for 'Total Commercial and Selling Expenses,' I obtained by taking the amount shown on the books and also from the report of M. M. P. Co. We began with the figures $406,626.99, and by the various adjustments brought the amount to $403,940.80, the amount which I have pro rated herein. I divided $403,940.80 into $800,554.02, the cylinder scale business, and $518,320.57, the fan scale business, and $111,651.34, the second-hand business.

"The next item is 'Loss on Sale of Second Hand and Repossessed or otherwise used Scales, pro rated between cylinder and fan business on the basis of the total number of old units contributed by each, $659.20.' I explained in full in connection with the cylinder scale account how I divided the loss on the second hand scale business, on the basis of units rather than on the amount of the gross sales.

"The figure for Interest on Capital Invested is the amount of $50,000, interest on $1,000,000 invested, at 5%, the division between cylinder and fan scale business being pro rated on the basis of gross sales.

"The next item is 'Miscellaneous charges or credits, $229.' These were just miscellaneous credits which are counterparts of adjustments which were made in these other accounts, representing items which did not belong there, and they were brought over here as miscellaneous credits.

"Thus the totals on new fan scale business as shown by our account when adjusted, is as follows:

Costs and Expenses	$454,468.46
Revenues	427,484.37

making a net loss on the new fan scale business of $29,984.09, which was equivalent to 5.877% of the net sales.

"The next column on page 1 of Exhibit 21 is marked, 'Business in Second Hand, Repossessed and Otherwise used Scales of All Makes.' In the column marked 'Revenues,' we have gross sales, $11,651.34 and this figure was taken from M. M. P. Co.'s report, supplemented by our investigation of the books and accounts and

records. The adjustment of that account is set forth on page
410 14 of Defendant's Exhibit No. 22. The amount that M. M. P. Co. reported was $94,820.35 as representing the sales of second-hand and refinished scales. We adjusted, by including the items shown on page 14, $11,584.99 and $5,246.00, which, added to the amount first reported, makes the sum of $111,651.34.

"The next item, $3,273, 'Scales Returned, Repossessed or Orders Canceled,' that was items which, not including the amount regarded as chargebacks on new cylinder scales by M. M. P. & Co., we found included chargebacks relating to second-hand scales. This is the counterpart of one of the adjustments that affected the chargebacks which was referred to in one of the previous pages of this statement of account. We deducted that amount $3,273 from the original revenue of $111,651.34 to obtain the net gross sales or gross sales after chargebacks, $108,378.34.

"The next item, 'Deductions from Gross Sales,'—price allowances on scales sold in trade for old scales taken in, charged according to the amount actually allowed on each scale sold, is divided into three items. On Toledo Scales taken in $215. It was the result of the detailed analysis of the allowances account, and represents allowance on second-hand scales, when an old one was taken back, and which was a direct charge, specifically chargeable against second-hand business. By direct analysis I mean that in distributing the amounts recorded as allowances on sales, the amount of the accounts on the books was not divided to show the amount of these allowances chargeable to cylinder scales, fan scales, or second-hand scales; they were just credited in the three accounts which were enumerated, the Toledo Scale allowances, allowances on scales of other makes, and special allowances, consequently, in order to ascertain what proportion of those three total amounts was chargeable to new cylinder or to new fan, it was necessary to analyze the account in detail—go back to the original records and vouchers which showed the sales to which they related and in that way we allocated to each original sale the actual allowance pertaining to it, instead of apportioning it on some percentage basis. Thus, we actually followed the transaction from its inception and to the original records available. We located all
411 of the allowances to either one or the other except $874.65, and of that we pro rated to second-hand $7.67, being the proportion with reference to the amount specifically allocated.

"The percentage that the allowance applicable to second-hand scales bears to the net sales of second hand scales is 1.465%. After the amount of the allowances are deducted from the total sales, we obtained the figure of $106,790.25.

The next item on page 2, Defendant's Exhibit 1, is 'Credits Arising from Installments forfeited on pulled and repossessed scales applying against cost of transportation to factory, renovation, refinishing and expense incident to subsequent resale thereof, less agents' commissions, $7,603.54, allowed on such installments—$16,480.30.' We obtained this figure from a detailed analysis of the records in respect to the amount of forfeited installments, which before deducting the agents' commission pertaining thereto amounted to $24,083.84. We

deducted from the total amount the commissions of $7,603.54 which gave us our net figure of $16,480.30. We have placed this amount to the credit of the second-hand scale business because I regarded it as a penalty which the company exacts from a customer who does not keep the scale he has purchased in the first instance. He has paid some installments and he does not want the scale, and the scale is pulled, or repossessed, and he forfeits those installments. That penalty is required to enable the company to defray the expense of shipping the pulled scale back to the factory; the expense of refinishing; overhauling and putting it in shape to re-sell; and towards the expenses of later marketing it. Therefore, inasmuch as it is all an offset to the expenses involved in making that used scale available for the second hand market, I regarded these forfeited installments as a proper offset to those expenses which are charged to the second hand business. In other words, it lessens the losses on the second hand business by the amount of the forfeited installments. According to my own knowledge that method and that treatment is adopted by corporations in other similar businesses.

"The next item is 'Losses on Sales of Second Hand and Repossessed Scales, pro rated between cylinder and fan scales business on the basis of the total number of old units contributed by
412 each.' This is merely the balance of the amount applicable to the cylinder and fan scale business by which the revenues on the second hand scale business fall below the cost and expenses. The amount was divided as before explained, on the basis of units contributed by the fan and cylinder businesses.

"In the column on page 1 marked Cost and Expense, is the estimated cost of each scale sold furnished by the company, including factory and overhead expenses $37,315.25. That figure is the amount by which I relieved the manufacturing cost of new scales, as I explained this morning. The total manufacturing cost incurred—material, labor and overhead—amounted to a certain sum of money, and it was not distributed or divided on the books as between new scales of either cylinder or fans. Inasmuch as a number of scales were first sold as new and then come back by reason of being repossessed and are thrown into the second hand class, it was necessary to transfer to the second hand class the actual or approximate cost of these scales, giving the second hand department credit for whatever they sell for when they are sold, and charging the second hand account with the cost of them, and relieving the new firm sales of that cost. This item, $37,315.25, is the computation of what the cost of those scales was and was arrived at in the following manner: Knowing what the approximate list value was, namely $93,386.17, for the new cylinder scales, the second black item in the first revenue column, and $59,168.45, the second black item in the new fan revenue column, the approximate list value of all repossessed scales, I took the ratio of the cost to the list value as determined from the average of all new scales. In other words, I used 20%, which is the approximate precentage shown on the cost of new cylinder scales which are being pulled, and 30% of the cost of the fan scales which

are being pulled. These two together gave the total of $37,315.25, which I have regarded as the approximate cost of the cylinder and fan scales pulled and disposed of as second hand scales. Of that amount I reli-ved the cost of the firm new scales, cylinder & fans. If I had not transferred that item as a proper charge for second hand business, the cost of the new cylinder and new fan scales would have been that much greater.

413 "The percentage figure in red, 34.341%, was determined by dividing the net revenue of second hand scales, $108,-378.34, into the $37,315.25, referred to, and represents the ratio of cost to selling value.

"The next item on page 1 of Exhibit 21 is 'Factory cost of renovating and refinishing the repossessed, second hand, or used scales and including freight inwards on said scales, $24,068.34.' We obtained this figure from the books of the company. The company kept separate accounts of the cost of refinishing repossessed scales. As a matter of fact, as I understand it, the actual work was done in a separate building, and they kept all the expense of refinishing those scales separate. In the account of M. M. P. Co., this amount was included in the factory overhead expenses and, of course, I reduced the factory overhead expense by that amount and charged it here. I have also included here the cost of freight inwards on those scales; that is, shipping them back to the factory. For this reason, our overhead was reduced from 80.17%, the figure used by M. M. P. Co. to 68.76%. It was the principal factor in reducing the percentage.

"The next item is 'Agents' and Managers' Commissions, exclusive of commissions on forfeited installments on repossessed scales, proportion charged according to the amount actually credited on each transaction, $28,683.95.' We secured this amount from the data and analysis of the records. It is not an approximation. This amount was actually allocated all but $1,315.98 out of $348,910.16, and the item of $108.59 is the proportion of $1,315.98 chargeable to second-hand business on the basis of the amounts specifically allocated to it. The small amount follows the same proportion.

"Our next item in red shows percentage, 26.567% derived by adding the last two items together and dividing the amount of net sales into that total sum.

"The Losses on Agents' and Customers' Accounts, $3,374.09, was the distribution to second-hand scales of its portion of the 3% on gross sales, hereinbefore explained.

"The next item, 'All other commercial expenses, viz: administration and general expenses pro rated on basis of gross sales, $31,-547.58.' That is the proportion charged to second-hand business of the total commercial expenses as shown by the books, ad-
414 justed in respect to the items shown in pages 12 and 13 of Defendant's Exhibit No. 22.

"Accordingly, the total for the cost and expenses of the second-hand scale business equals $125,098.00, while the total revenue from that business is shown as $123,270.55, the difference being $1,827.45, which is the loss on the second hand business. The total revenue

from second-hand business is $106,790.25, plus $16,480.30, the forfeited installments.

"At the foot of page 2 of Exhibit 21, I have a table entitled 'Reconciliation with profit and loss account as shown by the books.' The first item in this table of reconciliation is 'Net profits as per books before charging interest on capital invested, or losses on agents' balances, $33,276.25.' We obtained this figure from the books and the trial balances of the company. We then added back $28,432.90 for interest on borrowed money. This amount was charged up for the year for interest on bonds and interest on bills payable, and had been deducted from the operating profits in arriving at the net figure of profits as shown on the books of $33,276.25.

"This makes the total profit from all operations before charging the loss on agents' balances, or interest on investment, $61,709.15.

"The next item, 'Of which there was earned from the Canadian business, $24,080.32,' we obtained this figure directly from the books of the company. The next items, 'From royalties, $1,292.72' and 'Losses on vulcanizing business, $4,774.86,' shown in red, were also obtained from the books of the company.

"The total of these items, $20,598.17, leaves as the profit from the operations of the combined scales business, before charging losses on agents' balances and interest on capital invested, $41,110.98. This is divided, $31,843.50 to cylinder scale business and $9,267.48 to the fan scales business.

"The interest on capital invested, $50,000, is apportioned, $30,349.50 to the cylinder business and $19,650.50 to the fan scale business, and the loss on agents' balances $42,411.70, is divided, $25,810.67 to the cylinder scale business and $16,601.07 to the fan scale business. This is merely writing back these charges against cylinder and fan scale business and should be charged up against the profits of these businesses. The net result, according to our statement of the cylinder scale business for the year 1911 would leave a loss of $24,318.63 on this cylinder scale business, and a loss of $26,984.09 on the fan scale business, making a total loss on the entire business of $51,300.72, after charging interest allowed on capital invested and losses on agents' balances. Our figures for losses on agents' balances are substantially the same as those charged by M. M. P. Co., except that we took it on gross sales instead of on net sales.

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"Now, this Defendant's Exhibit 22, page 1 thereof, is headed "Toledo Scale Company. Comparative Statement of Profit and Loss Account on new cylinder scale business for the year ending December 31, 1911, as compiled by M. M. P. Co., and Price, Waterhouse & Co., respectively. The compilation by M. M. P. Co., refers to the summary of their report. In original sales the number of scales which we show is 5,297, as compared with 5,329 scales shown by them. The adjustment whereby we reached our figure is shown on page 2 of Defendant's Exhibit 22. The difference is 32 scales, the details of which are on the detailed sheet in possession of Mr. Bowman.

"In the column marked, 'Revenues' the amount shown by us is $800,554.02, as compared with the amount of $803,657.26, shown by them. The difference is $3,103.24. In the amount of Charges to Sales and Charge Backs, the number of scales reported by us is 665, and by them, 654. The adjustment whereby we reached that number of scales is shown on pages 3 to 5 of this Exhibit, No. 22.

"The value of the charge backs as reported by us is $93,386.17, as compared with the value of $77,985.87, shown by them. The difference is $15,400.30.

"The net number of scales sold as reported by us is 4,632, and by M. M. P. Co. 4,675.

"The amount of sales of cylinder scales as reported by us is $707,-167.85, and as reported by M. M. P. Co., $725,671.39.

"The allowances for exchanges and second hand scales are divided into three classes, Toledo allowances, exchange allowances, special allowances, and each of these items have been reported
416 separately by both M. M. P. Co. and ourselves. The total for these items of allowances as reported by us is $117,885.06, and as reported by them, $90,717.74, the difference being $27,167.32.

"The next figures are percentage figures which are arrived at by dividing the net sales into the total allowances and are 16.67% as reported by us, as compared with 12.501% as reported by M. M. P. Co.

"The total revenues as reported by us are $589,282.79, as against $634,953.65, reported by M. M. P. Co., leaving a difference in the shortage of revenue, $45,670.86.

"The next item, Manufacturing Cost and Commercial Expenses, Factory Cost, as reported by us is $143,067.84, and as reported by M. M. P. Co. $133,599.57, making a difference in the cost of production of $9,468.27.

"The proportion of such cost to net sales as reported by us is 20.231%, as compared with 18.411% reported by M. M. P. Co.

"The next item, Commissions to Agents, allocated as shown by us $188,229.85, to which we added the small unallocated item of $712.09, giving the total for commissions as shown by us of $188,-941.94, as compared with the figures $175,265.75, shown by the M. M. P. Co., which was figured as an average by them in arriving at their commissions. The difference between our accounts of commissions is $13,676.19. The proportion of commissions to net sales as reported by us is 26.718% and as reported by M. M. P. Co., 24.152%.

"In the item, 'Losses on Agents' Balances' we reported $24,016.62, and M. M. P. & Co. reported $21,770.14, a difference of $2,246.48, which difference is practically that of computing the losses on the gross sales instead of the net sales.

"The item 'All other commercial expenses,' we reported as $226,-045.27 and M. M. P. Co. reported $245,602.70, making a difference of $19,557.43. The principal portion of this difference arises through our charging the second hand business with its share of these expenses. M. M. P. Co. have charged all these expenses against either cylinder or fan scales and we charged a proportion of it to

second hands. Also, I think they apportioned on net sales while we apportioned on gross sales, which would make a slight difference, but the bulk of the change arises from our charging to second hand business its pro rata share.

"The next item of 'Salvage or Loss from Sale of Second Hand Scales,' as reported by us is $1,168.25, and as reported by them is a profit of $37,267.07, making a difference of $38,435.32. They did not actually show their figure as a figure in their reports, but it is arrived at by taking the difference between the figures they did show. The item of Depreciation on Buildings was taken by M. M. P. Co. at $303.13, and was disregarded by us.

"The Miscellaneous Charges and Credits taken by us at $10 was disregarded by them.

"The Interest on Investment reported by us as $30,349.50 was disregarded by M. M. P. Co.

"By referring to Net Revenues and Cost and Expenses, the amounts shown by M. M. P. Co. are, Revenues, $672,220.72; and Cost and Expenses, $576,541.29, the difference representing the net profit of $95,679.43, as reported by them, the details of which are in the possession of Mr. Bowman.

"Referring to page 3 of Exhibit 22, which is a summary of differences in Charge Backs and Debits to Cylinder Scale Sales, the number of charge backs as reported by M. M. P. Co. was 654, and the amount was $77,985.87. This was our starting point. The next item is a No. 346 cylinder scale repossessed, not included in M. M. P. Co.'s statement, the details of which transaction Mr. Bowman has. The next item is $15,517.70 which we have added to the amount of charge backs as shown by M. M. P. Co. This arises because of the under statement of the charge backs through the methods under which the books were kept at that time. When a sale was made, the customer was charged, the sales were credited with the full list value of the scale, and the commission was charged to the Commission Account and credited to the agent, etc., and whatever amount was collected on it was credited to the agent. If there was an allowance involved, as there frequently was, the Allowance Account was charged and the customer was credited. Consequently, in recording an original transaction it was quite a complicated entry; there were a number of accounts affected. At a later date, if the customer had missed two or three installments, as the case might be,
418 and the scale was repossessed, the customer was credited with the net difference as shown in his account, and that was charged to charge backs at that net figure without reversing all those other entries. For instance, if there had been an allowance for a scale when that original sale was made, it would have been charged to Allowance Account, but that was left to lie there, and the consequence was that by that simple single entry, by crediting the customer and charging charge backs with the difference, that difference was what in accounting terminology we call a composite entry, meaning an entry which combines a lot of different elements, and while, as a matter of debit and credit it keeps the books in balance, it left the accounts, the profit and loss, revenue and expense accounts in

such conditions that they did not reflect the true condition, and when the entry that was left there $15,517.70, is the amount by which the charge backs were omitted to be charged because of the net figure being charged there instead of the gross figure.

"The other accounts which the same transactions affected, were what we have called the forfeited installments. The bulk of it was $12,843.20 on these different allowance accounts, the allowances never having been written back in the case of a scale being pulled in that way. Consequently we took all those composite entries and segregated them to their component parts, and have given expression to it in these adjustment schedules. That increased the Charge Backs to $15,517.70 and the corresponding entry in these schedules is a credit to relieve the Allowance Accounts of the amounts as shown there, $1,584.50 and $97 and $465, and relieve the Commission Account of commissions which were constituted by that transaction, $528, and to establish as a revenue to the second-hand business the installments which have been forfeited, amounting to $12,843.20 from charge backs in respect to cylinder scales.

"In other words, if a scale was sold for $100 and then repossessed after $10 had been paid on it, the proper method would have been to enter a charge back of $100, whereas in that case the company would have entered it as $90. In order to do that, adjustments of $15,517.20 were necessary, and that entry, while it is charged to Chargebacks on this schedule, is credited to other accounts in
419 other schedules in this volume. It is spreading it to where it belongs. In the report submitted by M. M. P. Co., the item suggested would have been treated as a charge back of $90 and the $10 would have been credited to the account where it had been placed. In the method followed by me, I have regarded these forfeited installments as a proper credit against the expense which is involved in bringing back to the factory, overhauling and putting in condition for marketing the repossessed scale. In short, I have applied those forfeited installments for what they, in effect, are, a penalty to meet the expense to which the company is put in handling them.

"On page 4 of Defendant's Exhibit 22, we have the amount by which chargebacks resulting from substituted shipments, for example, where a customer first took a cylinder scale and later returned it in substitution for a fan scale, were understated by reason of the Company treating with net differences in billing values, instead of full billing values, amounting to $711.50. This would occur, for example, where a customer thought first that he would like a cylinder scale and one was shipped to him at a given price, say $100, and later he changed his mind and thought he would like a fan scale which, we will say, was worth $80, and he took the fan scale in place of the cylinder. The bookkeeping of the company merely made a record of the difference in these billing values of $20, which was entered as a chargeback to cylinder scales, when what actually happened was that the original scale came back and the new fan scale went out, and therefore the new cylinder scales should have been recorded with a chargeback of $100, and the fan scale should have been

recorded with a sale of $80, because in this accounting, as between cylinder and fan, we have to treat with the sales and the chargebacks of both businesses in their entirety. It only differs in value in this, because the cylinder sales value exceeded the fan sales value, and merely the difference was treated as a chargeback to cylinder sales, $711, whereas they should have charged back the full billing value to the cylinder scales and recorded a new sale of fan scales. The net effect of this was that the cylinder sales really received credit for $711 worth of fan sales, because the entry was originally recorded as a cylinder sale at the price of $100, and cylinder scale charge-
420 backs were charged with only $20, which left the $80 value of the fan scale business in the cylinder scale account. As a matter of fact, the cylinder sale, not being a fan sale, was wiped out entirely, and the fan scale was substituted.

"The next item, 'Value of 6 cylinder scales returned, to be substituted by a corresponding number of new sales shipped'. In the accounts of M. M. P. Co. only the difference in the billing value was dealt with in the Charge Back Account and this entry is required to increase the amount to the actual billing value of the scales originally shipped, and in the gross sales to record the full value of the scales shipped in substitution. This is the same general condition as referred to in the last item, except that here there is a cylinder scale going out to replace another cylinder scale, and by representing the difference in the charge backs only, they understated both the number of scales and the value—the gross billing value of the charge back and the selling value.

"The next entry is 'Items as enumerated below, erroneously credited to charge backs, thereby understanding the gross amount of charge backs,. This entry is received to transfer certain erroneous entries to the credit of: (1) special allowances, (2) advertising credit and (3) legal expense credit. The first of these items is $95.46, the second $80.00, and the last $4.06. These three items, which are in effect bookkeeping errors of classification, were posted by the bookkeepers to charge backs when they should have been posted to special allowances, advertising and legal expense. This simply transfers them to proper accounts.

"The next item covering Type 581 cylinder scales returned has reference to vouchers contained in the company's records under section No. 3. On the M. M. P. Co. account, this chargeback entry was understated by the amount of $60.00, this error being due to the vouchers containing references that one cylinder scale and one fan scale had been charged back, the amount of credit having been split between the two by M. M. P. Co. Our entries, necessary to increase the chargebacks on cylinder scales, and reduce the chargeback on fan scales. This is a case where the vouchers contain a reference to two scales, a cylinder and a fan, and as it states there, M. M.
421 P. & Co. split the amount of the chargeback, whereas, as a matter of fact, the voucher showed clearly there was only one scale returned.

"On page 5 of Defendant's Exhibit 22 there are five items, 'adjustments decreasing chargebacks and debits to sales' aggregating

$375.87, 'accessories, returns and allowances, etc.' Those were also bookkeeping entries which M. M. P. & Co. did not correct, and the result is that in the account they dealt with there were item- charged which the bookke-per should not have charged there in the first instance. One happened to be returns and allowances on accessories which had nothing to do with scales. Another was a collection expense item. Another a special allowance item. One was a bad debt. The other a loan of scales. We reduced the amount of chargebacks by the sum of these items.

"The next item '3 No. 405 fan scales returned by customers, erroneously charged by M. M. P. & Co. as cylinder scales, $105'. That Mr. Bowman has the details of, but, as it states here, a fan scale returned was erroneously treated as though it had been a cylinder scale returned. We are therefore relieving the chargebacks in cylinder scales of that amount. It is three fan scales. Personally I do not know. Mr. Bowman has the details.

"In the next item, 'Second-hand scales purchased in branch offices erroneously included by M. M. P. Co. in chargebacks, $249.55'. Our correction of this item was because of certain purchases made in branch offices of second-hand scales to take them off the market and on the books included in chargebacks, and had been left there by M. M. P. & Co. In other words, they had not taken it out and corrected it, and we have taken it out and corrected it. We have treated it as a proper charge to second-hand scales account, as an expense of that business.

"The next item, 'Eight scales originally sold as second-hand, etc.', represents scales which were not originally sold as new, and when they came back they were a chargeback against second-hand scales and not against new cylinder scales. That division of the account was to include chargebacks relating to new cylinder scales. Their report says that it was an accounting of new cylinder scales.
422 There was not a separate account organized for chargebacks to cylinder scales, and in equalizing it M. M. P. & Co. inadvertently left this item that way as shown on the books, even though the item on the books was in error. The books contained only chargeback account- in respect to scales of all kinds. The books did not attempt to divide the chargebacks as between the three divisions of sales. Therefore, it was erroneous to that extent, and part of the accounting which had to be done in this case by both sides has been to divide those accounts which are not divided on the books. I was attempting to improve upon the books.

"The next item, 'Customers' Uncollectible Accounts written off, etc.' was treated by us as bad debt losses, and amounts to $347.00. This item was not one where any scales came back; it was simply where an account was written off as bad, and should have been charged to Bad Debts, but was included by M. M. P. Co. among Chargebacks to cylinder scales. It was in the wrong account on the books. The total of the chargebacks as adjusted by us on tables 3, 4 and 5, Defendant's Exhibit 22, was 665 scales, and the amount $93,386.17, which, in our opinion, is an accurate adjustment independently of

whether M. M. P. Co. or the books have placed them in one place or another.

"On page 6 of Defendant's Exhibit 22, 'Summary of Differences in Toledo Scale Allowances, etc.', the allowances according to the books of the company were $29,051.47, of which 60.4% was charged by M. M. P. Co. to cylinder scales, the amount being $17,548.09. To this item, $29,051.47, we have added $190.00 and $20.00, and deducted $1,505.75, $97.00 and $40.00, adjusting the Toledo Scale Allowance Account to $27,618.72. In a general way this Toledo Scale Allowance Account covers allowances made, which varied according to the grade and kind of scale sold, the effect of it being to make a cut in price on the sale of a new scale, by making an allowance for an old scale taken back. These allowances are charged to the account called, Toledo Scale Allowances, irrespective of whether they come-back in respect of new cylinder or new fan scales sold. M. M. P. Co. show on their report the total amount of such allowances as $29,051.47. We analyzed the whole of this Toledo Scale Allowances Account by each transaction, and in doing so found
423 items which were improperly charged or credited to this account for one reason or another. Consequently, we adjusted the account as shown here to the correct amount for which specific allowances had been made, and we had to come to this figures as the result of our detailed analysis of the original vouchers and papers that were there. The items which we had to analyze would aggregate net, $27,618.72, and we analyzed all items with the exception of a total of $201.25, for which latter we did not have time to find the vouchers. The amount, by direct analysis, therefore, was $27,417.47. By our detailed examination of the original transactions, the amounts were allocated to their respective accounts, $23,631.03 allocated to cylinder sales, and $3,571.44 allocated to fan sales, $215.00 allocated to second hand sales, and the total of $201.25 we were unable to allocate. The amount which we actually allocated as chargeable to cylinder scale business was $23,631.03, while the amount assigned by proportion by the M. M. P. Co. was $17,547.09, or a difference of $6,083.94, our sum being that much higher than the amount M. M. P. Co. had pro rated on the basis of sales.

"Page 7 of Defendant's Exhibit 22 is entitled, 'Summary of differences in exchange scale allowances, etc.' This is the same as allowances for Toledo Scales, except that the allowances are for scales made by other companies and the allowances are made on the price of new scales sold when old ones come in. The amount reported by M. M. P. Co. was 60.40% of $99,047.21 shown on the books for sales of all kinds, giving the sum of $59,821.53.

"The items enumerated as erroneously credited to exchange scale allowances, etc., represented bookkeping errors of account classification, such as credits placed to the allowance account in respect to the scale of accessories, $6.50, or a discount which was cancelled, $7. They did not belong to the allowance account and did not represent allowances, and we had to transfer them out before we could agree on our final analysis. The item of $13.50 we have charged to other accounts. For instance, $7, which appears as a

credit adjustment on page 12, appears as a debit adjustment on page 7. The accessory sales were credited to miscellaneous sales. It was ultimately disposed of in one of the accounts.

424 "The next item is 'Value of cylinder, fan and second-hand scales sold, erroneously credited, etc.' This entry was required to transfer erroneous entries to the credit of cylinder scale sales $135, fan scale sales $770, second-hand scale sales $5,226. That debit of $5,226, as representing second-hand scales sold which had been credited to this account, was transferred, and is part of the item $5,246 which appears on page 14 of Exhibit 22, at the back.

"The theory upon which that amount of $5,246, on page 14, Exhibit 22, was transferred, was because one or more sales of second-hand scales had been credited to Exchange Scale Allowances, our adjustment taking it out of that account and placing it where it belonged, in Second Hand Sales.

"Other adjustments that were treated in the same manner under this head are the items of, 'Cylinder Scale Sales, $135, and Fan sales, $770. The $135 appears on page 2, the first item of adjustments, one No. 346 cylinder scale, voucher No. 426, February, 1911, I think is the item.

"The next item, 'Deduct Adjustments decreasing book balance, etc.' this adjustment was necessary because of a bookkeeping error. It was charged to Return Scale Allowances instead of Special Scale Allowances, where we have placed it, as it appears on page 8 of the Exhibit.

"The same was true of items charged to Exchange Scale Allowances and appearing as adjustments covering 'Loaner scales returned, $532.50, collection expenses, $10.90.'

"Our theory for making these adjustments was that they should be in the proper account regardless of whether or not the company had placed them there. These corrections were made in order to find a correct result of the business.

"The total amount of Exchange Scale Allowances as adjusted is, $102,177.52. The adjustments necessary to arrive at this result necessitated detailing a composite entry of which $1,584.50 was in cylinder scale charge backs, $288.50 in fan scale charge backs, and all of which is described in detail on page 3 of the Exhibit. These figures are part of the $9,947.24 appearing in the books and

425 the entries are simply to cancel the allowances shown in the composite entry, which was a balance.

"We made a detailed analysis of these Special Allowances by tracing each transaction and seeing in respect to what kind of a scale the allowance was made.

"We were able to find the details for items aggregating $101,549.12, leaving $628.40 for which we had not the time to find the vouchers. We found items aggregating $84,793.27 as allowances chargeable to the cylinder scale account.

"The amount by which our allocation exceeded the amount determined in the account of M. M. P. Co. was $21,968.74. Special allowances as distinguished from Toledo scale allowances and exchange scale allowances are allowances which in no way relate to

an exchange scale but are special reductions in price made by the seller.

"The proportion which M. M. P. Co. charged of these special allowances against cylinder scales was $13,346.12, that being 60.40% of a book balance of $22,096.23.

"After our adjustments of the book figures which was reduced to $21,573.66, the detailed analysis of the allowances showed that there should be charged against cylinder scale business $8,774.18, and to fan scale business $12,564.73, whereas in the report of M. M. P. Co. the charge against cylinder scale business was $4,571.94 in excess of the amount reported by us. We made a detailed analysis of the special allowance account, and we actually allocated $21,528.66, leaving a balance of $45 unallocated. That was not an approximation, but actual.

"Referring to page 10 of Exhibit 22, the amount which we show as 'Commissions as per books, $357,427.55,' was obtained from M. M. P. & Co.'s report and verified by the books. Their commissions chargeable to cylinder scale business were computed at an average of $37.49 per scale. We made certain 'adjustments decreasing book balance items as enumerated below' on the commission account which had been 'erroneously charged to commissions, and now transferred to the proper account,' special allowances, $3, freight $1.14, fan scales returned, $170, commissions on accessories sold, $22.21, $196.35 in all deducted.

"In the next item 'Commissions on Installments Received from Customers prior to Repossession, etc.' we transferred $1,603.54
426 as being commissions which had been paid on installments forfeited on scales which were returned or repossessed. The installments had been forfeited and as the amount of this commission on these installments had been paid it was a proper expense applicable to these particular installments. This item is shown on page 14 of the Exhibit.

"The amount shown for forfeited installments is $24,083.34, from which was deducted this commission of $7,603.54, leaving the net which the company received, $16,480.30. The commission of $7,603.54, in effect, lessened the amount of salvage which was applied to the second hand business as shown on page 14 of Exhibit 22. The rest of the money went to the company to be applied to the cost of refinishing second hand scales, or whatever they did with their second-hand scales.

"The commissions which had been entered and which were cancelled because of repossession, are the counterparts of adjustments which appear on page 3, on which appears the $528, cylinder scale chargebacks and $189.50 fan scale chargebacks are covered in that group of composite transactions.

"The total of the commission account, after being adjusted by us by these various items, is $348,910.16. We made a detailed analysis of the commissions and actually allocated a total of $355,197.72. The reason this allocated total is larger than the figure shown for the adjusted total is because the allocated total includes the commissions on those installments which were forfeited, but which were

actually allocated. The total amount not allocated was $1,315.98. Our analysis finally determined that there should be charged to the cylinder scale business $188,229.85, to fan scale business $130,680.38, and to second hand business, $28,683.95.

"The difference between the amounts as shown by M. M. P. Co., by their taking an average of $37.49 per scale and the amount as determined by us is $12,964.10, our amount being that much greater than theirs.

"We next show, 'Summary of Differences in Cost of cylinder Scale Sales, etc.' The first item, $74,151.95, covers cost of material and labor as reported by M. M. P. Co. Overhead expense based on 80.17% of combined labor and material, $59,447.62, and making a total of $133,599.57 were obtained from the report of M.
427 M. P. Co. The first adjustment was merely to remove from the new cylinder scale cost and put in the second hand cost the relative cost of second-hand scales which were erroneously included by M. M. P. Co. as new scale sales, the sales value and cost of which in our account had been transferred to second-hand business, $1,140.96.

"The next correction consists of the removal from Factory Overhead the amount expended on refinishing and renovating repossessed or pulled scales, which on the books, appear in a separate account, but by M. M. P. & Co. were included as part of Factory Overhead. It consisted practically all of it in the amount expended on finishing and renovating repossessed or pulled scales. In our account we have removed it from Overhead and treated it as a direct charge against the second-hand business and not being a proper charge in the general Overhead Account. The amount for cylinder scales is $8,389.96. The effect of this removal was to reduce the amount as applied to cylinder scales by M. M. P. & Co. from $133,599.57 to $124,068.65. Our total adjustments are $9,530.92.

"To determine the actual cost of production for the next item, 'adjustment increasing total cost of cylinder scales, less proportionate amount by which the cost estimated by the officials as applying to the total production fell short of the total amount of money actually expended in the course of the aggregate production—total $37,734.98, pro rated as between cylinder and fan scales on a basis of the estimated costs' I took from the books the amounts shown to have been expended on labor, material and overhead expenses in the year, adjusted in respect to inventories at the beginning and end of year of all new scales on hand, and the difference then represented the actual cost of new scales which had actually been sold, both fan and cylinder, the points being that they do not always sell the exact number produced or produce the exact number sold. There is generally a variation. The total cost ascertained represented the actual cost to the company of the new production which had been sold. If the cost of the respective units were multiplied by the number of each sold it would have agreed substantially, not to exact figures, but it would have agreed substantially with the actual money that had been expended, and if the company had had what is known

nowadays as a modern and scientific cost accounting system,
428 it would and should have so occurred. But they did not have that system, consequently the cost which they made or figured from time to time for their own use and purposes were not proven automatically, as they would have been with a modern cost system, with the books. Consequently when you actually came to compare the money expended with the cost as so compiled, there was this substantial discrepancy, which I was not at all surprised to find. It is quite customary and common to find such discrepancies where there are no scientific cost systems in use. It therefore was clear that the estimated costs of the combined cylinder and fan scales were too low and required to be raised in order to absorb the total cost.

"The total cost of the entire production was ascertained by taking the total costs on the books and making the adjustments as I have stated, the total difference being, $37,734.98, of which $18,999.19 is chargeable to cylinder scales. With these adjustments the cost of cylinder scales total is $143,067.84. The $37,734.98 was the amount by which the actual expenditures for costs exceeded the estimated expenditures, and I pro rated this as between cylinder and fan scales on a basis of the estimated cost of each.

"The actual cost of the aggregate production is shown by the books. They are not shown in one account. It involves a comparison of the inventories and is a matter of actual ascertainment.

"On page 12 of Exhibit 22 we show, 'Summary of Differences in Commercial and Selling Expenses, etc.' The figure, $406,626.99 is taken from their report and verified by the books. To this book figure we have added certain adjustments, increasing the book balances for items erroneously charged to the accounts noted but now transferred to commercial and selling expenses, these adjustments being counterparts of those shown in preceding sheets and have reference to such items as Special Allowances for Advertising, which covers an allowance off the price for advertising services. Our judgment was that these amounts were misplaced on the books and in the account as presented by M. M. P. Co. The same is true of other items which aggregate $2,137.27.

"We have transferred the amount of $1,712.88 from the
429 commercial and selling expenses to a miscellaneous income account because it was a revenue account and not an expense account.

"Certain small items were deducted from the total commercial and selling expenses such as freight, advertising, discount, etc., and were similarly adjusted because of bookkeeping errors, the counterpart of those items appearing in the accounts enumerated on the preceding sheets in Defendant's Exhibit 22.

"The amount received for repairs, $1,712.88, had been credited to the Expense Account. It had gone to reduce the total expense. We have simply transferred it, dealing with it as a miscellaneous income, which is what it was. It is one of the items of the $37,000 in the cast of renovating, refinishing the repossessed and second-hand scales.

"The item 'Advertising—special allowances, $1,891.68' was that

in making a sale they have sometimes to allow a trifle off the price or rather something on the price—in consideration of advertising services or purposes, and on the books that has been charged to 'special allowances,' and we transferred it to the commercial expense, as it was for advertising. It is a credit on page 8.

"The next items which have been deducted from the actual commercial and selling expenses represent Incoming freight on returned scales, $2,844.67, and Insurance $2,634.09. As I recall it, this appears on the books under a separate account and represents the amount of freight paid on scales repossessed or second-hand scales taken in exchange and returned to the factory to be refinished. Mr. Bowman can tell more precisely about that. As to some of it we got our information by specific inquiries. This amount of $2,844.67 was not an approximation but was taken directly from the books. While it was not analyzed, it is barely possible that there may be other items of freight in there. It was understood by us that it did not include freight on material for the manufacture of scales. (That part of the testimony stating what he was told was stricken out.)

"The item of Insurance, $2,634.09 included fire insurance and employers' liability insurance, and was charged by us as a manufacturing expense to Factory Overhead. The total of these two items is $5,478.76. I personally did not investigate it. I told Mr.
430 Bowman to transfer it, if it was fire and liability insurance.

"The next item, 'Difference between book balance and the statement, etc.,' amounting to $992.48, was one of the adjustments which M. M. P. Co. had made in the book figures and we did not know exactly what it was. With these adjustments the total of the commercial and selling expenses was $403,940.80. This amount was divided by us as between cylinder, fan and second hand scale business on the basis of the gross sales coming under those three headings and on that basis the proportion chargeable to cylinder scale business was 55.96%, which was equivalent to $226,045.27; to fan scale business, 36.23%, of $146,347.75 and to second hand business 7.81% or $31,547.78.

"The difference between the amount as distributed by M. M. P. Co. and the amount distributed by us was $19,557.43, ours being smaller than the amount charged by them in this particular instance. The greater portion of this difference arose by the transfer of the proportion of the amounts which I charged to the second hand scale business.

"On page 14 of Exhibit 22 we show, 'Summary of Differences in Value of Salvage, etc.' The amount of $11,584.99 was obtained from the papers of M. M. P. Co., supplemented by the company's books and records. The item of $5,246, was derived from an analysis of the company's books and records, and covered sales of second hand scales erroneously credited to exchange scale and Toledo scale allowances. The effect of these transfers was to increase the revenues of second hand scale sales from $94,820.35, as represented by M. M. P. Co., to $111,651.34.

"On page 14 we show, 'Charge backs for return of scales sold as

second hand, etc.' The amount shown as $3,273 was derived from an analysis of the Charge Backs account. This was deducted from the net sales, making the balance for net sales, $108,378.34.

"The allowances made on the sale of second hand scales where another old scale was taken in exchange was allocated by actual analysis. The amount allocated totals $1,588.09 and unallocated, $7.67, this latter amount being pro rated.

"The amount shown as $37,315.25 represents the approximate factory cost of repossessed cylinder and fan scales, which we
431 have transferred from the cost of new scales as a proper charge against these scales when they were sold as used or second hand scales. The reason for transferring this amount to that account was because the company incurred a cost in manufacturing those scales and when they were sold as second hand a charge must be made against them.

"In the account described by M. M. P. Co. under Basis No. 1, I could find no allowance for the cost of the repossessed scales which were sold as second hand. Their account does not show that they treated with that item at all. Their costs were based on net sales as shown in their statement and when they treated with the sales of second hand and repossessed scales sold as second hand they charged no cost against them at all. The next item in red $24,068.34 'cost *or* renovating and refinishing repossessed second-hand or used scales including freight to factory is from an account *is* carried on the books for the costs and expenses of refinishing and overhauling repossessed, second hand or used scales, and the amount of this account I transferred from factory overhead to the item entitled, 'Cost of Renovating and Refinishing.' This was transferred together with the Freight Inwards on scales, the total amount being $24,068.34.

"The item, Agents' Commissions, 16.62% of $302,275.29, represents the proportion of agents' commissions which M. M. P. Co. apportioned to the second hand business. The method by which they arrived at their amount is described by them. However, the amount actually chargeable as determined by direct analysis, except as to $108.59, which was not actually allocated, totaled $28,792.54.

"The item Losses on Agents' and Customers' Accounts, as reported by M. M. P. Co., was $2,844.61, and the amount returned by us is $3,374.09. In M. M. P. Co.'s report it is taken as 3% of the net sales. In our report it is 3% of the gross sales.

"In M. M. P. Co. account, no proportion of the next item, Commercial and Selling Expenses has been given to the second hand business. We charged against the second hand business 8.1% of the gross sales. This amounted to $31,547.78, and in making
432 this charge against second hand scale business it was removed from the new scale business.

"The item, 'Credit for Installments Received Prior to Repossession on Scales later Repossessed, etc.,' on cylinder scales, $12,843.20; on fan scales, $10,966.14; and second hand scales, $274.50 totalling, $24,083.84, were taken partly from the papers of M. M. P. Co., and supplemented by our analysis of the records.

"The deductions of $7,603.54 we made for the proportion of the installments which the agents got as commission. The balance represents the proportion accruing to the company and which has been credited to the second hand branch of the business. M. M. P. Co. did not report this amount in the second hand account, but simply left it in charge backs to new scales.

"The total proceeds of sales as reported by M. M. P. Co., according to the arrangement of their figures was $61,900.45, and would be a salvage as shown by them, whereas the results from the figures as adjusted by us show a loss of $1,827.45, which was distributed on the basis of the ratio of units contributed as a result of new cylinder sales to the total units contributed by cylinder and fan sales combined.

"This necessitated a charge to cylinder scale business of $1,168.25, and to fan scale business a charge of $659.20.

JOHN ALDEN BOWMAN, called as a witness on behalf of defendant, testified as follows:

Direct examination.

By Mr. Meads:

"I am 36 years old, and a public accountant. During the last 12 years, I have been employed by Price, Waterhouse & Company in audits, investigations, cost systems, installations for various purposes, financial consultation, investigations of profits and all manner of general accounting work. At the request of Mr. Seatree, resident senior member of our firm I made an investigation of the books of the Toledo Scale Company.

"Mr. Seatree spoke to me about the examination some time during the week ending August 26th, advising me that we would be allowed to examine papers and documents of M. M. P. & Co. On
433 Tuesday, September 5th, Mr. Seatree and I called on Mr. Hall, and our examination began on that day, of the papers in the possession of M. M. P. & Co., which related to their examination of the books of the Toledo Scale Company. I spent all of my time examining these papers in their office until Tuesday of the following week, when I left for Toledo, where I made an examination of the books of the Toledo Scale Company's office, and was continually employed in their office from that date until October 15th, when we returned to Chicago.

"When I arrived at Toledo, I had with me one assistant, and had arranged to have another come the next day. We continued on this basis for approximately six or seven days. In the meantime I arranged with Mr. Seatree for a visit to Toledo, at which time I pointed out that it would take a considerable amount of time and that more assistance was necessary if I was to be prepared to make a report by the 15th of October. We immediately had three men come from Detroit, and three from Chicago, so that on the next day we had employed on the work nine men, including myself.

"The first books to which I had access and which I examined were

their General Ledger and Combination Cash Journal, together with the supporting documents. From time to time there were various other records. I was in Toledo continuously with the possible exception of one day, from the time the work started until it was finished, and I was in charge of the men who were making the examination. The result of our work was preserved and is called by us our working sheets. At the conclusion of our work at Toledo I brought to our Chicago office the rough notes and working papers and together with Mr. Seatree and such other assistants as we needed, proceeded to compile the reports which you have here now, and which are known as Defendant's Exhibits 21 and 22.

"These instruments were prepared jointly by Mr. Seatree and myself.

"On page 2 of Defendant's Exhibit 22, which is entitled 'Summary of differences in cylinder scale sales as reported by M. M. P. & Co. and P. W. & Co. respectively,' the gross sales figure amounting to $803,657.26 was taken from the report of M. M. P. & Co.

"The next item of details of the adjustment made by P. W.
434 & Co., increasing the gross sales, one No. 346 cylinder scale, voucher No. 426, represents an item of $926.50, made up of six fan scales for $770, and one cylinder for $135, a second-hand scale for $15 and some supplies. An agent was found short $926.50 in scales and supplies charged to him. The whole amount was credited to exchange scale allowances and should have been credited, for $135 thereof, to sales. In reality it was a sale to him or operates in the same manner. They charged his account and should have credited scale sales.

"The next item of $822 represents several transactions entered as debits to sales—where the customer will purchase one kind of scale, and, for one cause or another, return it, and get another kind of scale. The replacement, so far as the books are concerned, has been treated merely with the net difference between the selling price of the old scale and the selling price of the new. In one case it may be an increased price, on the other, it may be a decreased price. Therefore, I have taken this entry and set out the sales of substitution so that on one hand I have the return of the scale and on the other I have the sale of another scale, the $822 being the net result of those several transactions.

"This would not be shown by the other method of bookkeeping. As you will note on page 4 of this same exhibit, the value of the returns has been taken out of the debit to sales.

"The effect of this, of course, is to increase both the scales and the charge backs, and my aim was to find out what the production has really been. An entry like that is not at all necessary in all cases. But, speaking from the standpoint which I am now, where you are finding the cost of sales, in order to do so, you must handle both sides—the outgoing and incoming sales—because the company has no record of how many scales were produced within the limits of a year, and you can only obtain that by analyzing the sales and making calculations when you have all the elements that go to make up production.

"The next item is a deduction, an adjustment decreasing the gross sales of second-hand and rebuilt cylinder scales, included by M. M. P. & Co. in new cylinder sales, and treated by us as second-hand sales. The number is 39 scales, and the total of this adjustment is $4,010.99.

These figures are taken from M. M. P. & Co. from their work-
435 ing papers. I reconciled their figures with the gross sales as shown by the books. The 39 scales were made up of second-hand, $1,953, and rebuilts, $2,057.99, which, in our figures, were transferred to second hand scales, but they included them in new sales.

"The next item of $49.25, covered accessories which was included in cylinder scales sales by M. M. P. & Co., but treated by us as miscellaneous sales, and consequently taken out of cylinder and fan sales.

"After making the adjustments to which I have just testified, the final results shows the sales of net cylinder scales as 5,297 scales, totaling $800,554.02.

"Page 3, Exhibit 22, shows 'Summary of differences in charge-backs and debits to cylinder sales, etc.' The amount taken from their report covers 654 scales, amounting to $77,985.87. In our adjustments we compared the books and vouchers with the abstract of the fan scale sales which was prepared from the papers loaned us by M. M. P. & Co., and we analyzed and compared them with the books, vouchers and sales tickets. Our investigation developed that voucher No. 292 entered in January under Section 2 recorded a sale of scale at $5. Our investigation determined that what had occurred was this: A cylinder scale which had been previously billed to a customer at $125 was returned, and in substitution thereof a fan scale was shipped, which was billed at $130, so that in dealing with these items on the company's books they treated only with the $5 difference in price, crediting that to sales. In our papers, and throughout this analysis of sales we have relieved this account of those debits, and instead have added a cylinder scale to chargebacks and set up the sale of a fan scale, since the effect of that transaction was that the company received back a cylinder scale that should be charged back and sold a new fan scale. In M. M. P. & Co.'s report that chargeback was omitted.

"The next item, page 3 of Exhibit 22, shows 'Amount by which charge backs in respect of repossessed scales were understated by M. M. P. & Co., $15,517.70.' This understatement of chargebacks arises by reason of the bookkeeping entries in respect to repossessed scales, having been incompletely recorded by the company. Instead of reversing the entire transaction and thus relieving the vari-
436 ous accounts involved, one simple entry was made. The adjustment is required to raise this charge to the full billing value of the original sale, and, incidentally, per contra, to cancel allowances, commissions, etc., abrogated by the repossession, and to record installments forfeited, exchange scale allowances $1,584.50, Toledo scale allowances, $97, special allowances, $465, commissions, $528, forfeited installments $12,843.20, making the total undercharge to charge back $15,517.70.

"Taking one of these items in order to explain the manner in which they were treated by us, I will refer to page 3 of the exhibit, showing sale of cylinder scale originally sold for $140 and on which the customer had paid $10. The company's books show this item as a chargeback of $130. All transactions of that character were analyzed by us to find out what the original billing value of the scale was, how much had been forfeited on it as a result of those new scales being pulled or repossessed by the company. My entry to correct the books was to credit forfeited installments with $10 and debit chargebacks with the full original price of the scale, $140.

"Another similar transaction covered in this exhibit is shown where a cylinder scale was charged to chargebacks during the month of February at $130. The true facts of that transaction were that it was sold for $140; there was $10 cash paid on it when the scale was pulled and the entry on the books appears as an entry to chargebacks for $130. We adjusted the entry exactly as the adjustment covering the one previously explained. They are all the same, all repossessed and pulled scales.

"There is an item appearing as an adjustment, covering $51. There appears in the chargeback account a debit of $104. The real facts reveal that transaction originally was for a scale that sold for $155 on which there was $51 which probably represented cash or a second-hand scale or some other item which came out in another transaction.

"After we found out what these forfeited installments would amount to, we made a second analysis and made what is called 'Forfeited Installments' and divided them between what was cash, allowances, exchange sales and balances of commissions, which had gotten into this account in error. The total amount of these adjustments, as shown by these detail sheets, is $27,538.34. The first readjustment was of this adjusted figure $3,454.50, represent-
437 ing commissions, exchange and special allowances, and the second figure of $7,603.54 of commissions on forfeited installments.

"Referring to page 3 of Exhibit 22, the item of $15,517.70, representing summary of difference in chargebacks or what is known as debits of sales, which was arrived at by adding forfeited installments, $12,843.20, exchange scale allowances, $1,584.50, Toledo scale allowances—special allowances, $465, and commission canceled, $528.

"On page 4 of the Exhibit, which is a continuation of this table, is the item, 'Amount by which Chargebacks resulting from substituted shipments, etc.' In what are known as debits to sales, certain cylinder scales were returned and fan scales shipped in substitution. An item is here shown covering a transaction on September, 1911, charging cylinder scale chargebacks with $30. The original transaction covered the sale of a cylinder scale for $100, on which $20 had been paid, and the scale was pulled. The $20 was forfeited and the customer took in exchange a $50 fan scale. These transactions, in effect, are the same all the way through. The aggregate amount of the adjustment is $711.20, and the number of scales involved, three.

"The next item, 'Value of 6 cylinder scales returned to be substituted by a corresponding number of new scales shipped.' On page 2 of the same Exhibit, you find that this is a contra entry and simply represents the other side of the transaction, and in effect, means that by removing it from one part of the account and entering in another, we keep our accounts in balance. It was not entirely to keep it in balance. It was to correct the sales, understated and chargebacks also understated.

"The next items enumerated as erroneously credited to chargebacks were really bookkeeping errors, as in the case of $95.46, which covers a number of small items, the books showing them credited to chargeback account or debit to sales, or some other place, and they had to be taken out of those accounts and thrown into the special allowance account. I increased the chargebacks account and decreased the special allowance account by the amount of that error, and I was de-
ducting from chargebacks account an item erroneously
438 credited, and was transferring it to special allowance account, where it belonged.

"The next item has reference to a credit of $80, made to a customer for advertising, which was afterwards reversed and was credited to this Toledo chargebacks account, whereas it should have been carried to the proper account, advertising, where the original credit—charge was placed. In the first instance you must charge an account with the amount you allow to the customer, and when this transaction came through it was credited to the wrong account, so I transferred it in order to make it follow the proper charge.

"The credit to legal expense, $4.06, was for a scale wherein the collection of the account was referred to the Legal Department, and on which they incurred an expense of $4.06, and charged it to the customer's account. Subsequently the scale was repossessed with a balance due on the purchase price of $135, and a credit was put through for $139.06 and charged to chargebacks, so that in effect the chargeback account had a debit of $4.06, which should have gone to Legal Expense.

"The next item is a No. 381 scale returned, covered by voucher No. 660, section No. 3, and dated July, 1911. We referred to the transaction, there were two scales sold to a customer, one being a No. 381 cylinder scale, and the other being a No. 253 fan scale, on the whole of which he had paid $20, $10 on each scale, I think. The cylinder scale was sold for $170 and the fan scale, I think, $60. The cylinder scale was returned, and the $20 forfeited. In our examination of M. M. P. & Co.'s papers we saw where the entry which amounted to $150, representing the difference between the original billing value and the $20 forfeited installments that was charged to chargeback account, was on their papers divided as between fan and cylinder, respectively, $90 of it having been charged to cylinder scales and $60 to fan scales. Our investigation developed that only the cylinder scale was returned, and the fan scale was retained, so it was necessary to correct this entry, and relieve the fan scale chargeback of $60, and carry it into cylinder scale chargebacks.

"The next item of adjustment shown on page 5 of Exhibit 22, is

'Items erroneously included as chargebacks in accounts of
439 M. M. P. & Co., as under accessories, etc.' These adjustments have the effect of reducing the balance of debits to sales.

"One of these transactions, covering the adjustment, $25, represented a scale which had been previously billed to a customer as a loaner, because the scale was loaned to him. When the scale came back, the return scale was charged to chargebacks accounts, whereas, properly, it should have been charged to loaner account. This entry was to remove the charge that had been erroneously made on this account, and transfer it to its proper account. Not knowing the details of it I would say it was a scale that had been originally sold to somebody and they didn't want it, or wanted some other kind, and temporarily they billed to the customer on a loaner's charge for the sake of keeping part of it on their books.

"The next item represents 3 scales which, in the analysis of M. M. P. & Co., were erroneously included as cylinder scale chargebacks that were really fan scale chargebacks, and this entry is to remove that item of $105 from the cylinder scale chargebacks and place it properly in fan scale chargebacks. On the books they were thrown into one common account known as chargebacks, no division having been made between cylinder, fan and second-hand scales, respectively.

"The next item, 'Second-hand scales purchased at branch offices, erroneously included by M. M. P. & Co. as chargebacks, $249.55,' represented a number of items where branch offices in order to repossess a scale, had suffered the expense of buying back the scales which they could not repossess in the ordinary course of business, that is to say, the customer could not pay the balance that he owed on the scale, and, as I understand it, these scales were sold, and the company bought them in at the public sales.

"The next item, '8 scales originally sold second hand, pulled, repossessed or returned, treated by M. M. P. & Co. as new cylinder scales, etc.,' amounting to $938, was a peculiar entry. In the chargeback account no division is made between cylinder and fan or second hand scales. M. M. P. & Co., in going through the account divided it between cylinder and fan scales, also included such scales which were originally sold as second hand, fan and cylinder. Although they relieved the return scales of the number, that is, of the
440 unit of the scale, they did not relieve the charge back account of the value of those scales. This $938 is to correct the entry made on their papers with respect to second hand scales which were returned.

"These scales, in the first instance, were sold as secondhand, and are so marked on the voucher. To ascertain the real transaction we took the abstract from M. M. P. & Co.'s papers and we referred to the vouchers, accounts receivable, customers' ledgers, and such documents as supported the entries themselves.

"The next item is, 'Customers' Uncollectible Accounts Written Off, etc.' This amount of $347, was treated by P. W. & Co. as bad debt losses and by M. M. P. & Co. as cylinder scale charge backs. In these transactions the scales originally sold to customers could

not be repossessed, and the balance owing was lost. Instead of the company putting it in bad debt losses, it appeared in cylinder scale charge backs, either cylinder or fan scale charge backs.

"The number of scales as reported by M. M. P. & Co. as charge backs was 654. The same account as adjusted by us covered 665 scales. The amount of the charge backs as reported by M. M. P. & Co. was $77,985.87, and the amount as finally adjusted by us was $93,386.17, and this total is shown on page 5, both as to the number of scales and the amount.

"On page 6 of Exhibit 22, 'Summary of Differences in Toledo Scale Allowances as reported by M. M. P. & Co., and P. W. & Co., respectively' the first adjustment which we have made covering the item of $190, was for an allowance made for three second hand scales taken back by the company on scales of new cylinder scales. In the analysis by M. M. P. & Co., that there is here included as return scales. This entry removes this erroneous charge from that account and puts it in its proper place. The allowances were made for second hand scales taken in on three cylinder scales sold.

"The Toledo Scale Allowances is that account into which they charge their own scales taken back in trade, as distinguished from the Exchange Scale Allowances wherein they put the allowances made on scales of other makes taken back in trade.

"The details with reference to this adjustment of $190, show that in section 1, month of August, two No. 30-B-scales and one
441 No. 28-B scale aggregating $190 were taken in exchange on a sale of cylinder scales. The scales taken in were fan scales and were included as charge backs on the books, whereas, they were second hand fan scales taken in trade for the sale of cylinder scales. Therefore, I took them out of the fan scale charge backs and placed them into the Toledo Scale Allowances, where they properly belong, because the allowances were made for Toledo scales taken as part purchase price.

"The next item, 'Proceeds of sales of two second hand non-computing scales erroneously credited to Toledo Scale Allowances, and now transferred to Second Hand Scales,' covers two transactions representing two non-computing scales which have been taken as part payment on a sale. They were erroneously credited to this account and this entry is to remove that improper credit from the account and place it in second hand scale sales where it belongs.

"The next item, 'To adjustment decreasing book balance, special allowances made to customers, etc.' This amount of $1,505.75, represents a number of allowances that were made to customers on the scales sold them which did not involve the return of any kind of a scale in part payment of the scales sold, and these allowances were incorrectly charged to this account. This entry is to take out those charges, which have erroneously been placed there and put them in special allowances, where they properly belong.

"The next item is, 'Amount of price allowance abrogated by reason of repossession of new scales on which such allowances were made, etc.' This total of $137 represents charges to this account for allowances made on scales that were sold previously and the

scales having been repossessed, these allowances were not necessary, and had to be reversed and thrown back into this account. In other words, the scale having been repossessed, the allowance, as a matter of fact, was never finally conceded by the company.

"The total of Toledo Scale Allowances taken at the start from the figures of M. M. P. & Co., and adjusted by us, was $27,618.72. We made a detailed analysis of this account and found that cylinder scale business should be charged with $23,631.03, as against $17,-
547.09, estimated by M. M. P. & Co. In our analysis we show
442 $6,083.94 more allowances than M. M. P. & Co. showed as the result of their arbitrary division on a basis of 60.40% on the sales. There was chargeable to fan scale business $3,571.44, and to second hand business $215. Of the whole amount analyzed by us, only $201.25 was not allocated. The difference of $6,083.94 is the difference between an estimate and the analysis of the books.

"On page 7 of the Exhibit, is a 'Summary of Differences in Exchange Scale Allowances, as reported by M. M. P. & Co. and P. W. & Co., respectively.' In that account are included allowances made to customers for scales of other makes than in exchange for sales of their own scales, regardless of whether those are fan, cylinder or second hand sales. The first item appearing on the sheet, 'Exchange Scale Allowances as per books, $99,047.24,' were the figures taken from M. M. P. & Co.'s report and with which we started, and to which were added certain adjustments increasing the amount of these allowance items enumerated below, erroneously credited to exchange scale allowances. The entries were required to transfer the erroneous entries to the credit of discount, $7, and accessories sales, $6.50. These items were found erroneously credited to exchange scale allowance account and represented, in the former case, Discount, $7, which item was being credited back because of having been previously allowed a customer, and this credit was to offset it.

"The next item is, 'Value of Cylinder, *g*an and second hand scales sold, erroneously credited to exchange scale allowances, etc. In the exchange scale allowances accounts were included a large number of sales of second hand scales, aggregating, $5,226, which we removed from that account and placed in the proper account of second hand scale sales. These were originally made as second hand sales, and had been put into the new scale sales account erroneously, the effect of which was to make the debit side of the account $3,226 greater. I removed that credit and placed it in second-hand scales. The $135 item is the first item on page 2, Defendant's Exhibit 22, and the $770 item fan scale sales is the same as the $135."

"We have deducted from exchange scale allowances as the next adjustment special allowances made to customers not involving a
return scale. In this account, entitled, 'Exchange Scale Al-
443 lowances,' were allowances made to customers on sales of scales which were in the nature of marring allowances or other allowances that did not involve the return of second hand scales. They were improperly charged to this account, so we removed them by crediting back to this account the exact amount that had been placed in these erroneously, and transferring it in this

case to special allowances. The amount of this transfer was $597.82.

"The next adjustment is 'Items erroneously charged to exchange scale allowances, now transferred to the proper account.' $532.50 of this amount, which represents loaner scales, is the same as the $25 which I explained in defendant's Exhibit 22, page 5, and means that scales that had been billed to customers as loaned scales and were returned and erroneously charged to this account of exchange scale allowances, whereas they should have been charged to what is known as a loaner account, and this entry is to take out that improper charge by adding back a credit of that amount, and transferring it to its proper account. In other words, we eliminated from this account everything except those transactions in which there was an exchange scale allowance.

"The next item is, 'Amount of price allowances abrogated by reason of repossession of new scales, on which such allowances were made.' This represents allowances made to customers on sales which were afterwards pulled and the allowances were unnecessary. By reason of the fact that the company handled these transactions on a composite entry on the journal, the allowances were erroneously brought into the charge back account, and these adjustments are to bring them properly to the credit of exchange scale allowances, where they belong. The total of the exchange scale allowances, after being adjusted by us was $102,177.52. In our analysis of this amount we were able to allocate $101,549.12. We were unable to allocate $628.40.

"The total amount of exchange scales allowances, by actual analysis, chargeable to cylinder scale business is $84,793.27, as against $59,824.53, reported by M. M. P. & Co., a difference of $24,068.74.

"The proportion of the exchange scale allowances actually allocated as chargeable to the fan scale business was $15,590.18, and to the second hand scale business, $1,175.67.

444 "Referring to page 8 of the Exhibit, we find, 'Summary of Differences in Special Allowances, as reported by M. M. P. & Co. and P. W. & Co., respectively.' This represents allowances made to customers on sales of scales for marring and sample allowances and such other names as were given them.

"The first item in this account 'Special allowances chargeable to cylinder scale business as compared by M. M. P. & Co., etc.' We started with the figures shown on M. M. P. & Co.'s report, supplemented by the books, $13,346.12. We added an adjustment for Exchange Scale Allowances, $597.82 on the previous page, and Toledo Scale Allowances, $1,505.75, page 6. The amount of $597.82 was a transaction where no exchange scale was involved, and the amount had been entered in the wrong account. There is a $20 item which has been charged to fan scale sales, which was a special allowance on the voucher.

"The fan scale allowance, amounting to $20, was an allowance for marring on the sale of a cylinder scale, and was charged in the Exchange Account, when it should have been in the Special Allowance Account. The $20 item covered a second hand fan scale and

was so shown on the voucher. The total of the items which we have added to the special allowance account is $2,123.57.

"The next item is 'Special Allowances erroneously charged to commission account, now transferred to special allowances $3.' That covered a special allowance charged to commissions, but which did not belong in commissions; it should have been charged to special allowances.

" 'Deduct adjustments decreasing book balance—special allowances erroneously credited to charge backs now transferred to the proper account, $30.46.' This adjustment was necessary because the item of $30.46 covered a special allowance that was not allowed. The credit was erroneously placed in charge backs account, whereas it should have gone into this special allowance account. This allowance was not made to the customer, and was just reversing the original allowance made to him.

" 'Allowances made to customers in respect of Advertising erroneously charged to Special Allowances, now transferred to the proper account $1,891.68.' Those were allowances made to cus-
445 tomers for advertising which had been charged to special allowance account and were in reality Advertising Allowances that should have been charged to Advertising Account. The corresponding entry to this is shown on page 12 of Exhibit 22, namely, $1,891.68, charged to commercial and selling expenses.

"The next item is 'Amount of prices allowances abrogated by reason of repossession of new scales, for which such allowances were made, etc.' This represents special allowances which were made to customers where the scales were repossessed or pulled. The sales not having been consummated, these allowances were not necessary; therefore, should have been credited to the special allowance account, but by reason of the composite journal entry which they made found their way into the charge back account.

"The total amount of Special Allowances as adjusted by us was $21,528.66. We made a detailed analysis of the special allowance account by comparison with the documents on file. We were unable to actually allocate only $45 of this. The amount chargeable to cylinder scale business, according to the actual allocation which we made was $8,774.18, as against $13,346.12 which has been estimated by M. M. P. & Co. In that particular instance, M. M. P. & Co. had underestimated the special allowances chargeable to cylinder scales by $4,571.94. The amount for special allowances that should have been properly charged to the fan scale business was $12,564.73, and to second hand scale business, $189.75.

"On page 9 of Exhibit 22, 'Summary of Unallocated items prorated on the basis of the amounts actually chargeable to each, as determined by a detailed analysis of 99.42% of the total allowances.' The percentage figure 99.42% was arrived at by taking the total allowances as shown by these adjusted figures and applying them against the actual analysis that we made of the three kinds of allowances, Toledo Scale Allowances, Exchange scale allowances, Special allowances, and which represented 99.42% of that total. The amount of unallocated allowances was $874.65 made up of $628.40

for Toledo Scale Allowances, $201.25 for Exchange Allowances, and $45 for Special Allowances. These were apportioned by us on the basis of the ratio of the specifically allocated allowances to the total of those allowances. In apportioning the items in this
446 way, we applied to the cylinder scale business, of the unallocated amount, $688.58, to the fan scale business $180.40, and to second hand scale business, $7.67.

"On page 10 of Exhibit 22, 'Summary of Differences in Commissions as reported by M. M. P. & Co., and W. P. & Co., respectively,' we took from the M. M. P. & Co.'s report their total commission figures of $357,427.55, checked with the books and the amount which M. M. P. & Co. had charged to cylinder scale business as commissions at an average of $37.49 per scale, amounting to $175,265.75. We deducted from the book balance items erroneously charged to commisisons and now transferred to their proper accounts the following: Special allowances, $3; freight, $1.14; fan scales returned, $170; commissions on accessories sold, $22.21; total, $196.35.

"On page 8 of Defendant's Exhibit 22, you will find the $3 charged in the special allowance account; on page 12 of the same exhibit the $1.14 which referred to the commercial and selling expense account; the $170 referring to fan scales returned was charged to the charge backs account in fan scales. All of these items were removed from this account. Commissions on accessories sold, were actually found on vouchers to be small items of commissions on stands and accessories sold, which had been in that account, and were taken out of commissions on scales and charged to commissions on miscellaneous sales, where all such items as stands and small accessories are placed.

"The next item is, 'Commissions on installments received from customers prior to repossession by the company, which were forfeited and accordingly treated as forfeited installments in the accounts prepared by P. W. & Co.' The amount of $7,603.54 represents the commissions that were credited to agents on installments which were forfeited by reason of the company pulling back or repossessing the scales, and is taken out of this account and charged to the forfeited installments, second hand scale business. The counterpart of that entry is found on page 14 of Defendant's Exhibit 22, which shows this amount as a deduction from the item of $24,083.84, which was the credit for installments received on these scales. This amount of $7,603.54 was determined by analysis up to a certain point. We analyzed the commissions on for-
447 feited installments for the first three months of 1911, and we used that as a basis for our percentage and this is divided on the basis of that test percentage, which we arrived at by actually analyzing it for these three months, as we did not have time to go all the way through it.

"The next item is 'Balance of Agents' Commission canceled by reason of repossession of the scales on which such commissions were credited, etc.' Because of the repossession having been recorded by means of a composite entry, cylinder scale charge backs were charged with $528, and fan scale charge backs with $189.50, a total of

$717.50. When these scales were repossessed, the agent was charged back with the commission and in this case $717.50 represents the balance of commission which should have been credited back to the commission account, and which by reason of these composite entries was credited to the exchange scale allowance account or the charge back account as it happened in this case. The effect of this then is that the charge backs are reduced when commissions should be reduced. The commissions are not actually paid, the commission's account should have been reduced by that amount. The commissions were credited to the salesmen's account, and then written off. The total commissions as adjusted by us then amount to $348,910.16. We made an analysis of these commissions, and from our detailed analysis $188,229.85 was chargeable to cylinder scales, $130,680.38 to fan scales, $28,683.95 to second-hand scales. We were unable to allocate $1,315.98, and that we pro rated on the basis of the allocated items, $712.09, to cylinders, $495.30 to fans, $108.59 to second hand."

"The difference in the commission as reported by M. M. P. & Co., and that reported by us was $12,964.10, this amount being the excess of commission over that shown in M. M. P. & Co.'s report.

On page 11 of Exhibit 22 entitled Summary of difference in cost of cylinder scale sales as reported by M. M. P. & Co., and P. W. Co., respectively, etc. 'various figures for labor, etc.' The total of $133,599.57 was obtained by us from M. M. P. & Co.'s report.

We have made certain adjustments in that account which reduced the total cost of cylinder scale sales , (1)—the relative cost
448 of second hand scale sales erroneously included by M. M. P. & Co. as new scale sales, the sales value and cost of which in the accounts of P. W. & Co. have been transferred to second hand scale business in the amount of $1,140.96.

"The reason for this transfer can be found on page 2 of Exhibit 22 where it will be noted $4,010.99 is taken out of the sales and placed in the second hand scale business. This figure of $1,140.96 representing M. M. P. & Co.'s cost. After the sales come out the cost as well must come out and be placed in the second hand scales account.

"We determine the amount of $1,140.96 by taking M. M. P. & Co.'s report and ascertaining the costs that were used on those scales after we transferred them to second hand scale business, and applied their percentage of 80.17% for overhead expenses.

"The amount of $1,140.96 is that proportion of $4,010.90 which M. M. P. & Co. have taken as the cost of cylinder scales and which they have reported as $75,151.95. This adjusted figure represents the cost of thirty-nine scales.

"The reason for M. M. P. & Co.'s difference in the amount of overhead in their report is due to the fact that they included certain items which should have been taken out.

"The major portion of this is made up of the repair department which the company operated across the street from their present factory where the second hand scales which were returned were repaired and refinished. This expense had been included by M. M. P.

& Co. as a part of the factory overhead. We called it the cost of renovating and refinishing repossessed or used scales, and have removed that from the general overhead and placed it in another account which makes a deduction from their figures of $21,223.67. This makes a deduction of $8,389.96.

"This would make a total deduction in the cost of cylinder scale sales of $9,530.92.

"Certain adjustments have been made to the figure given as $124,068.85, increasing the cost of cylinder scale sales. The question of cost was discussed with Mr. Seatree, and he and I jointly made up the cost of sales of fan and cylinder scales, and we found that there was an understatement of $37,734.98 in the cost of production of every kind of sales for that year, and we prorated that figure on a
449 basis of 50.349% to cylinder scales, or $18,999.19 and 49.651% to fan scales or $18,735.79, which, in effect, approximately divided the amount of that over-statement between fan and cylinder sales."

"The reason so small an amount was apportioned to cylinder scales was because that was the proportion of the cylinder scale costs furnished by M. M. P. & Co to the total of the cost of production and was prorated on that basis.

Then testimony as follows:

Q. You took those figures because it was the figure which they had divided, the percentage on which they had divided the cost?

A. I took their figures for the cost of cylinder scales. But for the cost of the fan scales we arrived at the very same, practically the same, conclusion on fan scales, we made a list of the fan scales sold, and Mr. Zolg found us a skeleton record—it is not really a cost book—it was a record of skeleton costs, labor and material, of fan scales. I think if I am not mistaken, that there were perhaps half dozen or more costs. I can give you the dates, I think. In the case of one that was dated April 1st, 1912, and then there was another one dated June 10, 1913, and from these figures—there perhaps were half a dozen of those sheets—and from those we built up the cost of the fan scales, of labor and material, by obtaining from Mr. Reeves and Mr. Mould, I think his name is, he is a superintendent of the remodeling department—this is the sheet that I worked from. No, this is the sheet that I worked from. These are the scales that were sold during that period, and from Mr. Reeves and Mr. Mould, I think I asked them a question as to really how many styles of scales——

Mr. Zane: We object to his importing hearsay of Reeves and Mould into the thing.

The Master: Objection sustained. You may state whether you obtained information from them.

A. I obtained from *the* the information that in reality there was not a wide difference between the various kinds of fan scales, that a scale got a number——

Mr. Zane: I object. He is importing the same thing now.
The Master: Yes.
Mr. Zane: I move to strike out what he said there.
450 The Master: Objection sustained.

A. These scales which I got the cost of are approximately the same scales which we took from the skeletons with a few changes by reason of some attachment that was on the scale that we could not find the cost of, and in that case we estimated the cost of that attachment, and either added it or deducted it, and arrived at the approximate cost of fan scales.

Mr. Meads:

Q. And you multiplied the number of fan scales by those costs of the various kinds?
A. We multiplied the number of fan scales by those costs.
Q. And the result of multiplying the cylinder scales by the estimated cost and the fan scales by the estimated cost showed a difference between the amount so obtained and the actual amount extended of how much?
A. $37,734.98.

Mr. Zane: What is his average cost of a fan?
Mr. Meads: Wait, you will have a chance to ask him that.
Mr. Zane: I thought maybe you wanted to know. You ought to, to see whether his figures are anywhere near correct or not.

Mr. Meads:

Q. This $37,000 plus which you have just mentioned, was that an amount of approximation, or was that an amount determined by an analysis of these books?
A. By an analysis of the books.
Q. That was the actual amount extended by the company?
A. Yes.
Q. And that amount you divided between the fan scales and the cylinder scales in the proportion of fifty plus for the cylinder and forty-nine plus for the fan, as you just testified?
A. Yes, sir.
Q. Why did you take the figures 50 plus for cylinder and 49 plus for fan, to divide the amount?
A. Here is the way it was brought about——
Mr. Zane: Just answer it.
A. I will if I can answer it this way. That the total understatement represented $37,734.98, whereas the estimated or test costs together represented $246,418.57.

451 Mr. Meads:

Q. What was the actual cost shown by the books?
A. The actual cost was $284,153.55, and the relation of these estimated costs to the total cost were prorated on that basis, with

the result that the cylinder scale business got $18,999.19 and the fan scale business got the balance, or $18,735.79.

Q. What was the amount of the estimated cost of cylinder scale business?

A. $124,068.65.

Q. That is shown on page 11?

A. Yes.

Q. What was your estimated cost of your fan scales?

A. $122,349.92.

Q. What was the total estimated cost of the two?

A. $246.418.57.

Q. The actual cost as shown by the books was?

A. $284,153.55.

Q. Now, taking your total estimated cost from your total actual cost left a balance of $37,000 plus?

A. Yes, sir.

Q. You divided that $37,000 which was the excess of the expenditure by the company between the cylinder scale business and the fan scale business on the basis which you have testified?

A. Yes.

Q. 50 plus for the cylinder and 49 plus for the fan?

A. Yes, sir.

Q. The business for the year in cylinder and fan scales was not in that proportion, was it?

Mr. Zane: No, that is not the way he got it.

A. I just do not get your question.

Mr. Meads: I am going to show how he did get it.

A. I don't get the question.

Q. Why did you use those figures of 50 plus for the cost of the cylinder scales?

A. From the books of the company we ascertained what the cost of production was. I don't know as I just understand your question.

Q. The total estimated cost on the cylinder scale was one figure, was it not? How much?

A. $124,068.65.

Q. And the total estimated cost on the fan?

A. Is $122,349.92.

452 Q. As the first of those figures is to the second of those figures so this $18,999.19, the cost of the cylinder scale is to the balance, which is the cost of the fan scale. Is that the way you divided that $37,000?

A. No, sir. It is the total of the two. The relation of the estimated cylinder cost to the total of the estimated cost. I will put it this way: The total of the two estimated costs is $246,418.57. The ratio of estimated cylinder cost of $124,068.25 is 50.349 per cent of $246,418.57, or that proportion of $37,734.98 which is $18,999.19.

"On page 12 of Exhibit 22, entitled 'Summary of differences in commercial and selling expenses as reported by M. M. P. & Co. and P. W. & Co. respectively.' The figure on the statement was $406,626.99 for commercial and selling expenses and 60.40% thereof, $245,602.70 were taken from M. M. P. & Co.'s statement. Compared with the books certain adjustments have been made increasing the book balance of the same expenses such as items erroneously charged to accounts and now transferred to commercial and selling expenses; collection expense, Toledo Scale Allowances $3.55; exchange scale allowances $10.90; special allowances $1,891.68; commissions $1.14; Toledo Scale Allowances $230.00.

"The reason for adding these items to commercial and selling expenses was that in the case of the first item, Toledo Scale Allowances account had been erroneously charged. By referring to page 5, Exhibit 22, you will find that this amount should have been originally charged to collection expenses. On page 7 of Exhibit 22 is shown the amount taken out of exchange scale allowances and charged to commercial and selling expenses as shown on page 12, and in the case of $1,891.68 you will note that this has been taken out of the special allowances as shown on page 8 and charged to commercial and selling expenses as shown on page 12.

"The item of $230.00 on page 5 of Exhibit 22 which has been transferred from charge backs accounts to commercial and selling expenses is a part of the aggregate amount of $2,137.27.

"These items were removed from the accounts enumerated because they did not belong there and were entered in the commercial and selling expense account because that is where they should have
453 been charged originally.

"The next item of adjustment $1,712.88 represents the sales of miscellaneous supplies and accessories which in M. M. P. & Co.'s figures had been included in commercial and selling expenses and removed by us in our calculation and carried to miscellaneous sales. I removed a credit from this account and transferred that credit, and that is the reason why I put it in the debit column.

"Other adjustments decreasing book balances, items erroneously credited to the following accounts and now transferred to commercial and selling expenses are various items of freight, advertising, discount, etc. The items of $5.04 shows the transaction where the company recovered $5.04 on freight paid which was erroneously credited to sales. We have taken it out of sales and brought it into commercial and selling expenses as an offset to a charge already shown in that account. Practically the same is true of the other items shown on this page as adjustments.

"The $80.00 adjustments shown here is an allowance for advertising and that cancellation meant that a credit was made for the Toledo Scale allowances whereas it should have been placed in the commercial and selling expenses, and the entry removed this allowance from Toledo Scale allowances account and carry it to the commercial and selling expenses.

"The item, $39, is a recovery of bills receivable item which is

credited to sales, but should have been credited to bad debts or recovery of bad debts. This $39, was taken out of sales by putting a debit in sales and transferring it to commercial expense. The total of these is $135.10. My recollection is that it had to do with the expense of collecting or recovering bills receivable, and is an item that had previously been written off. I won't be certain about that particular item."

"The net item 'Incoming freight on returned scales and insurance included by M. P. & Co., in commercial and selling expenses, considered in the accounts prepared by P. W. & Co. especially chargeable to second hand scale business and manufacturing expenses respectively.' The amount of $2,844.67 incoming freight on returned scales was obtained from a copy of a trial balance obtained
454 from M. M. P. & Co., and thereafter compared with the books and found on page 167 of the company's ledger. This item was removed from the general commercial and selling expenses and transferred to second hand scale business as being the freight on second hand scales or on scales returned that were afterwards sold as second hand s-ales.

"The item of insurance totaling $2,634.09 was taken from a trail balance compiled by M. M. P. & Co., and compared with the books. The insurance account is found on page 168 of the company's ledger and covers fire insurance, and other items that were liba-lity insurance.

"This item was removed by us from the commercial and selling expense and placed in the factory overhead expenses.

"The total of these two items is $5,478.76.

"The next item is the difference between the book balance and statement prepared by M. M. P. & Co. $922.48. This is the difference between M. M. P. & Co.' figures and the books and presume it was an adjustment made by them. I don't know just what it was. I have no details on it at all.

"The total commercial and selling expenses after making all the adjustments is $103,940.80.

"This was pro rated by us on the basis of gross sales. The cylinder scales business amounted to $800,554.02 or 55.95% of the total gross sales and was therefore charged with $226,045.27 for commercial and selling expenses. The fan scale business the gross sales of which amounted to $518,320.57 or 36.23% of the gross sales were charged with $146,347.75. The second hand scale business, the gross sales of which amounted to $111,651.34 or 7.81% of the total gross sales was charged with $31,547.78.

"The total amount of gross sales of all the business was $1,430,-535.93.

"The difference between the amount charged for commercial and selling expenses by M. M. P. & Co. and P. W. & Co. was $19,557.43 less than shown by their figures.

"Page 14 of Exhibit 22 entitled 'Summary of differences in value of salvage appertaining to the cylinder scale business derived
455 from sales of second hand and used scales. Proceeds from sales $94,820.35 as reported by M. M. P. & Co.' This amount

was obtained by us from the report of M. M. P. & Co. and compared with the books.

"We have added certain adjustments such as second hand Toledo scale sales included in cylinder and fan scale sales as new $11,584.99; sales of second hand scales erroneously credited to exchange scale and Toledo allowances $5,246.00; making a total of $111,651.43; as against $94,820.25 reported by M. M. P. & Co.

"The figure $11,584.99 was obtained from the summary of cylinder scale sales which summary was made up by M. P. & Co., and the fan scale sales were obtained by an actual analysis of the fan sales account, which was abstracted from M. M. P. & Co.'s papers at Toledo, analyzed and compared with the vouchers and the adjustment was made from those papers; as to the second hand scales erroneously credited to exchange scale and Toledo scale allowances, these were obtained by actual analysis of those accounts.

"The second of those second-hand scales erroneously credited to exchange scale and Toledo scale allowances were transactions originally second-hand scales. On page 2 is the portion of cylinder scale sales included by them as new cylinder scales that properly belonged in second-hand, and that is the propoction of cylinder. The fans are not included in there."

"The difference as shown on page 2, namely, $4,010.99 and $5,246.00 as representing fan scales erroneously treated was arrived at by an actual analysis of the fan scale sales. The figure $4,010.99 was all cylinders.

Mr. Meads: Those were all cylinders, and the difference of the fans he said he obtained by a direct analysis, making up the difference of $5,246.

Mr. Zane: We object to this sort of testimony. They admit on the face of their papers they have sold the scale with our patent in it, and want to treat is — a second hand scale for the purpose of absorbing the profit upon it by means of charges against the second hand scales. They cannot do that.

Mr. Meads: If we have sold a second hand scale, all there is to it, we have to in the first instance show the transaction as
456 a second hand scale transaction and not as a new scale transaction, and this gentleman in this analysis of these accounts has attempted to do exactly what the company did, not treat it as a new scale, but show in the first instance a second hand scale, and the proportion of cylinder second hand as we will show later he carries out.

Mr. Zane: So far as we are concerned it is a new scale, if you take and sell one of our scales with the patent in it. You could not get any right to the patent. That is the funny thing about this. They constitute themselves people to decide the legal propositions, and then make the account.

Mr. Meads: They don't do anything of the kind, your Honor, and they afterwards show what proportion of these were cylinder scales, and account for it by a detailed analysis. But you cannot treat the second scale in the first place as a sale of a new scale.

Mr. Zane: If they put it in the cylinder scale account of sales it

would have shown greater profits upon cylinder scales, but by throwing it in the second hand sales they can show an absolute loss on those second hand scales. There is the difference.

Mr. Meads: We do not throw it out at all, your Honor. We treat the transaction exactly as it occurred. In the first instance, a sale of a second hand scale, and an analysis of the books and these orders and the customers' accounts show that these particular items were sales of second hand scales.

Mr. Zane: Well, as to us it is a first hand scale. That is the trouble with his theory.

Mr. Meades: Not necessarily. They may have been scales we did not manufacture at all. Your Honor, it might be a second hand cylinder scale.

Mr. Zane: It don't make any difference. Suppose they get it from somebody else who had infringed our patent.

Mr. Meads: Is there any evidence here that we got it from somebody else? We may have bought it from you.

The Master: To ahead with the examination.

"In the analysis of the charge back accounts appeared scales which came back and which were second hand and in the
457 abstract prepared by M. M. P. Co. they were divided between new fan or new cylinder scales; in our analysis we determined that they had been erroneously charged to new scales and we took them out of the new fan and new cylinder business and brought them into the second hand scale business as being second hand scales returned. The effect of which was to lessen the amount of $111,651.34 by $3,273.00, making a balance of net sales in the second hand business of $108,378.34.

"We find by actual analysis of the price allowances on second hand scales that $1,588.09 really belonged to second hand scale business. By actual analysis we allocated all except $7.67 which could not be traced and was therefore pro rated as shown on page 14 of Exhibit.

"The next item of adjustment is the manufacturing cost, to-wit, factory cost of repossessed scales sold as second hand or used, including purchase, cost of bought scales, not allowed by M. M. P. & Co. $37,315.25. The figure shown is the cost of scales which were repossessed or pulled both cylinder and fan and afterward sold as second hand scales. In M. M. P. & Co.'s report there is no allowance made for the cost of these second hand scales. They have taken the cost on net sales of new scales, and so far as I can find there is no allowance made for the cost of those scales.

"Mr. Zane: Where did you get it?

"Mr. Meads: From what source did you take this item?

"A. The cost of these scales is arrived at by finding the cost of production for the year, and in the case of cylinder scales, the cost of scales sold approximated 20%, and the fan scales 30%, and those were the ratios of cost which were used in ariving at this figure, to which was added items of purchases made by the branches on these repossessed scales or purchased scale, so that the figure here shown represents the cost of the second-hand scales repossessed or

purchased, and that was credited to the stock account, to the cos of production. Cylinders are given credit for it in the stock ac count. It is not included in this acount and was never charge there in the first place.

"We assumed that those scales, which were afterwards sold a second-hand scales, cost something, and on the number o
458 cylinder scales sold and the amount of scales, this figure $37,315.25, is the cost that applies to those scales.

"The next item of adjustment is the cost of renovating and re finishing repossessed, second-hand or used scales, including freigh to factory which, as reported by M. M. P. & Co., was nothing That figure of $24,068.34, so made out represents the cost of run ning the detached refinishing department which was located acros the street from the company's main plant, and the figures for run ning that department were $21,223.67.

"Q. What page is that on?

"A. It is not on that page. It is in these figures from the trial balance which was taken. Here you can see it. The factory over head expense is not shown there. This is factory costs, and the other is commercial expense. The figure here of 80.17 which M. M. P & Co., used to spread their overhead expense, shown on page 17. Our figure is after this $21,223.67 is taken out of overhead and brings down the percentage to 68.76 instead of 80.17."

"The next item of agents' commissions, 16.62% being ratio of second hand scales to fan and second hand scales combined, total commissions $357,427.55 less $175,265.75 proportion charged to cylinder scales. These amounts were determined by analysis with the exception of $108.59. The amount reported by M. M. P. & Co. was $30,275.59 and was determined by their percentage method. The amount determined by us was an exact allocation except as to the proportion of $108.59 which were items that could not be distributed or rather allocated.

"On page 14 of Exhibit 22 we show the total of those allocated as $28,685.96. The total of the commissions with the allocated and unallocated items is $28,792.54.

"The figures reported by M. M. P. & Co. as $2,884.61 covering Losses on Agents and Customers' Account represents 3% of the net sales whereas in our calculations we used 3% of the gross sales and arrived at a figure of $3,374.09. This amount was testified to by Mr. Seatree and was determined by him together with my assistance.

"The next adjustment was for the commercial and selling expenses of the proportion appertaining to second hand business as pro rated on the basis of gross sales, $31,547.78. M. M. P. & Co. report nothing in second hand business for this item. They
459 take the total of commercial and selling expenses and divide them between fan and cylinder scale business on the basis of 60.38% to new cylinder scales and 39.60% to new fan scale sales and no allowances made by them for this expense in second hand business.

"The amount $31,547.78 represents the amount chargeable to second hand scale business as shown on page 13, Defendant's Exhibit

No. 22. It is shown that the second hand scale business was $111,-651.34 of the gross sale of $1,540,525.93 or 7.81% of the total. Therefore the second hand business was charged with that proportion of the total selling and commercial expenses, or $31,547.78, which is 7.81% of $403,940.80.

"The next adjustment is a credit which should have gone to second-hand business for installments received prior to repossession of scales later repossessed or pulled. applied in this account against cost of transportation, renovation, refinishing, etc., and credited by M. M. P. & Co., to new scale charge backs, which we obtained by an actual analysis of the charge back accounts, as shown by the company's books, the profit of which was as follows: The foregoing papers of M. M. P. & Co. contain an abstract of the charge back accounts divided between cylinder and fan scales, and we compared it with the books with the result that we found this item of $12,843.20, by actual analysis, to be forfeited installments on cylinder scale business. On fan scale business we found the amount to be $10,966.14, and on second hand scale business the amount of forfeited installments was $274.50."

"From the total of these forfeited installments amounting to $24,-083.84 we deduct $7,603.54, commissions as shown on page 10 of Defendant's Exhibit 22, and carry it as commissions into the second hand scale account as commissions chargeable to these forfeited installments which were credited to the agents. The amount of these installments which actually remained with the company after paying commissions was $16,480.30 and this net amount was credited to the second hand business. The gross figures of commercial and selling expenses were taken from the books primarily from the papers of M. M. P. & Co. and supplemented by an examination of the books. The total amount of these commercial and selling expenses was
$403,940.80 and this figure is found on page 13 of Exhibit
460 22. This amount was not an approximation but was taken directly from the books.

"On page 13, Defendant's Exhibit 22 we show a summary of the gross sales and the amount of $31,547.78 representing the proportion chargeable to the second hand scale business or the ratio the gross sales of second hand business bore to the total gross sales of the entire business. This item divided upon the M. M. P. & Co.'s report entirely between new cylinder and new fan scales.

"The item of "Credit for Installments received prior to Repossession on scales later repossessed or 'pulled' applied in this account against cost of transportation, renovation, refinishing, etc. credited by M. M. P. & Co. to new scale charge backs, on cylinder scales $12,843.20.' This figure was obtained from an abstract of the charge backs account from the papers of M. M. P. & Co. and afterwards checked with the books and analyzed by reference to the original vouchers and other documents on file supporting them. These three amounts, $12,843.20 for cylinder scales, $10,966.14 on fan scales, and $274.50 on second hand scales was determined by direct analysis.

"The total installments received on scales in which the scales had been pulled or repossessed was $24,083.84 and we deducted from that

amount commissions paid thereon, amounting to $7,603.54, leaving a balance of $16,480.30, which we give as a revenue to second-hand business. This item represents installments paid by customers on fan and cylinder scales which they purchased, that is, new fan and cylinder scales and which were afterwards pulled or repossessed by the company. These installments have been taken out of the new cylinder and fan scale charge backs, and transferred to the credit of second-hand scale business to take up the cost of transportation, renovating and refinishing of those scales which were pulled and were afterwards sold as second-hand scales."

"After these adjustments were made by us it resulted in a loss on the second hand business of $1,827.45 as compared to a revenue or profit of $61,700.45 reported by M. M. P. & Co.

"The amount as apportioned by M. M. P. & Co. was on the basis of new cylinder business at 60.40% or $37,267.07 and on new fan scale business at 39.60% or $24,433.38, so that as a result of M. M.
461 P. & Co.'s computation they carried to the new cylinder scale business a profit of $37,267.07 as against a loss on the second hand business determined by us of $1,168.25.

"Page 1 of Defendant's Exhibit 21, entitled, 'Statement of profit and loss account for year ending December 31, 1911, etc.' This Exhibit was prepared jointly by Mr. Seatree and myself.

"The number of scales shipped and sold, namely, 5297, was obtained by us from the working papers furnished by M. M. P. & Co. and afterward adjusted by us as a result of the examination of the other accounts.

"The number of new fan scales sold, namely, 8,453, was obtained by an abstract of the fan scale business from the papers of M. M. P. & Co. supplemented by an actual examination of the documents supporting these items and checking them with the books.

The Master: Let me ask you here. I notice that you occasionally say in your answers that you got your information from Marwick, Mitchell & Company's papers or reports supplemented by the books or compared with the books. Does that mean that you afterwards compared them with the books and where they didn't agree as you understood that you took the books for it instead of their report?

A. Yes, sir.

The Master: And you simply used their report as a starting point?

A. Yes, as an expedient, yes, sir.

"The gross sales value totaling $800,554.52 was taken from the papers of M. M. P. & Co.'s with such adjustments made by reference to the books as we found necessary from an analysis of the accounts.

"The revenues of the second hand scale business totaling $111,651.34 were taken from the papers of M. M. P. & Co. and checked with the books, and adjustments made as found necessary by an analysis of the account.

"The number of scales repossessed or pulled in the fan scale business amounting to 810 was determined from the papers of M. M. P. & Co.'s supplemented by a detailed analysis of the charge backs accounts and reference to other supporting documents and papers.

"The gross sales value as originally billed in the new scale business

totaling $93,386.17 was determined from an abstract of M. M.
462 P. & Co.'s papers and an analysis of the books and supporting documents.

"The gross sales value as originally billed of the new fan scales business totaling $59,168.45 was determined from the papers of M. M. P. & Co.'s supported by an analysis of the books and supporting documents. The same is true of the item $3,273.00 being the gross sales value of second hand scales pulled.

"We arrived at the figures for net firm sales of cylinder scales shown as 4,632 by deducting from 5,297 scales shipped and sold, the figure 665 as representing scales pulled or repossessed.

"The total value of net firm sales of cylinder scales was $707,-167.85.

"The figure 7,643 covering firm sales of fan scales was determined by deducting 810 scales pulled, repossessed and returned from 8,453 scales shipped and sold. The net value of firm sales of fan scales being $459,152.12 and the value of firm sales of second hand scales is $108,378.34.

"By an analysis of the books and supporting documents and vouchers we determined that the deductions from gross sales value of firm sales (covering price allowances on scales sold in trade for old scales taken in, charged according to the amount actually allowed on each scale sold) was $23,631.03, and the amount of $3,571.44 being allowances for Toledo scales taken in on fan scales, and $215 for Toledo scales taken in on sales of second-hand scales."

"The allowance on scales of other makes taken in on cylinder scales was determined by an analysis of the books and supporting documents and amounts to $84,793.27, and the allowance for scales of other makes taken in on sales of fan scales totaled $15,580.18. The allowance for scales of other makes taken in on the sales of second-hand scales totals $1,175.67.

"Other special allowances totaling $8,744.18 is also taken from the books supplemented by an analysis of the supporting documents. The amount of $12,564.73 for special allowances on the sale of fan scales was arrived at in the same way. In this manner we also determined the amount of special allowances $189.75 on the sales of second hand scales.

"On page 9 of Exhibit 22 the unallocated amount of $874.65 was pro rated on the basis of the amounts actually chargeable to
463 each division of sales as determined by a detailed analysis and represents 99.42 per cent of the total, and distributed by adding to the cylinder scale business $686.58; to the fan scale business $180.40; and to the second hand scale business $7.67.

"As shown on page 1 of Defendant's Exhibit 21, the total amount of the deductions of the allocated and unallocated items as applicable to the new cylinder scale business is $117,885.06 to the fan scale business $31,896.75; and to second hand scale business $1,588.09. This will leave a balance of new cylinder scale business of $589,-282.79; fan scale business $427,225.37; and second hand scale business $106,790.25.

"The estimated cost of each scale sold, furnished by the company,

including factory overhead expenses, totaling $124,068.65, was obtained from the papers of M. M. P. & Co., adjusted by the correct number of scales sold. The cost of new fan scale business, $122,349.92, is as testified by me on Friday, and $37,315.25, the business in second-hand, repossessed and otherwise used scales, is the figure as shown on page 14 of Exhibit 22.

"On page 11 of Defendant's Exhibit 22 we show at the bottom of the page "Total understatement of cost of cylinder and fan scales combined $37,734.98. This figure was prorated between cylinder and fan scales on the basis of the costs appertaining to each, of which there is chargeable to cylinder scales $18,999.19.

"From the company's books we advanced the outlays for the cost of production of that year. The figure we arrived at in our computations as the cost of scales was $284,153.55 which exceeded the estimated cost, which was $246,418.57, leaving a difference of $37,734.98. This difference was distributed by us on the basis of the ratio that the estimated cost of both fan and cylinder scales bore to the total estimate of fan and cylinder scales. In other words, the figure of $246,418.57 in the case of the fan scales represents 47.651 per cent, or $18,735.79, and on cylinder scales 50.349 per cent, or $18,999.19.

"On page 1 of Exhibit 21 we show the total factory cost of new scales after adding the amounts by which actual costs exceeded the estimated costs, for new cylinder scales $143,067.84, for new fan scales $141,085.71, and for second hand scales $37,315.25.

464 "The proportion of the factory cost to the net sales of cylinder scales was 20.231 per cent, of fan scales 30.72 per cent and of second hand scales 34.431 per cent.

"The next item covering factory cost of renovating and refinishing repossessed, second hand or used scales, including freight inwards on said scales and applicable to second hand business was obtained from the books and totaled $24,068.34.

"The amounts shown on page 10 of Exhibit 22 as Agents and Managers' Commissions entered during the year, but exclusive of commissions on forfeited installments of repossessed scales, proportion charged 'according to the amount actually credited on each transaction,' and as applied to new cylinder-scale business, is $188,229.85 on new fan business, $130,680.38, and on second-hand scale business $28,683.95, and was determined by an analysis of the books, vouchers and other papers.

"Page 9 of Defendant's Exhibit 22 shows that only $1,315.98 were not allocated. That amount was prorated on the basis of the amount actually chargeable to each as determined by detailed analysis of 99.62 per cent of total commissions.

"The proportion to net sales of the agent's commissions as determined by the allocated and unallocated items applicable to new cylinder scale business was 26.718 per cent, to new fan scale business 28.569 per cent, and to second hand scale business 26.567 per cent.

"The losses on Agents' and Customers' accounts were prorated on the basis of 3 per cent of gross sales and together with several adjustments for items actually written off amount to $42,411.70.

"Page 1 of Exhibit 21 shows the amount of these losses applicable to new cylinder scale business on the proportion of new cylinder scale business to the whole business, the amount being $24,016.62, on new fan scale business $15,549.62, and on second scale business $3,374.09.

"Pages 12 and 13 of Defendant's Exhibit 22 shows the total commercial expenses as $403,940.80. This amount was divided on a basis of gross sales of each class of sales, new cylinder, new fan and second hand. By dividing the amount in this way there was charged to new cylinder scale business $226,045.27; to new fan scale
465 business $146,347.75; and to second hand scale business $31,547.78.

"The item on page 2 of Exhibit 21 'credit arising from installments forfeited, etc.' is found on page 14 of Exhibit 22, the amount of $16,480.30, being the salvage from those items after paying commissions, determined by an actual analysis of the books and records.

"The losses on second hand and repossessed scales total $1,827.45, being the last item shown on page 14 of Exhibit 22, were divided between the new cylinder and new fan scale business in proportion to the number of units or scales contributed by each so that by this division we charged against the new cylinder business $1,168.25, and against the new fan scale business $659.20.

"I was in Court when Mr. Seatree testified to the manner in which the division was made covering Interest on Capital Invested. I made the division in the manner in which he testified. The amount found applicable to new cylinder scale business was $30,349.50, and to new fan scale business was $19,650.50.

"There is a small item covering miscellaneous charges or credits $10.00 which I have added to the cost and expenses of new cylinder scale business. This item represents a correction of a sale made in 1910, the scale having been returned in 1911 and covering an error made by some bookkeeper in the price of the scale, and I corrected this $10 relative to that miscellaneous charge of the previous year. The items of revenue in the new fan scale business totaling $229.00 are similar corrections.

"The details of these corrections show one item of $37.50 which was charged against 1911 sales but really was an adjustment of 1909 sales.

"Other items shown here in the details and aggregating $266.50 credited to current year's sales when really they should have been adjustments made on 1910 sales, the net of these adjustments being $229.00 as shown in the exhibit.

"The total amount of costs and expenses of new cylinder scale business as determined by all of the foregoing is $613,599.42 and total revenue is $589,282.79, leaving a loss of $24,316.63.

"The total amount of revenue from new fan scale business was determined by us as $427,484.37. The total amount of costs and
466 expenses of fan business $454,468.46, leaving a loss of $26,984.09, and the loss sustained by the Company on new cylinder business was 3.438 per cent of net sales. The proportion of

the loss of the business in new fan scales was 5.877 per cent of net sales."

"All of the figures shown on page 3 of Exhibit 21 and on which is marked Exhibit II were obtained from the report of M. M. P. & Co., and from their account marked Basis No. 1, 1911.

"On page 3 of Plaintiff's Exhibit 40 is shown profit on manufacture and sale of cylinder scales for the year ending December 31, 1911, on Basis No. 1, $95,679.43, which we have shown as computed by M. M. P. & Co., and shown by us on page 3 of Exhibit 21.

On this Exhibit on page 3 we show certain items under the heading 'Residue, representing new fan scale business.' The figures given in red as 8,453 is the number of scales shown by M. M. P. & Co., together with the adjustments as arrived at by our analysis.

"The figure shown as $525,227.10 was the difference between the sales which they called new Cylinder scale sales and what was left and designated as fan scale sales.

"The figures from M. M. P. & Co., analysis show $77,985.87 of the charge backs applied to cylinder scales, leaving a balance of $49,456.83, which was applied against fan sales, both of the foregoing figures having been taken from their working papers so that on their theory the amount of charge backs applied against fan scales was obtained by merely taking from the whole amount the amount they charged to cylinders and applying the rest to fans. Their figure of charge backs agreed with the ledger balances and their figures as well."

"The amount of their original fan scales was $525,227.10. By deducting therefrom $49,456.83, the amount of their fan scale charge backs they arrived at the amount of new sales shown as $475,770.27.

"In their report the total allowances covering exchange sales, Toledo Scale and special allowances they used the per cent of $60.40% which they applied against the cylinder scale business. This naturally left the balance of the allowance to be apportioned against the fan scale business as 39.60%. That is the way we arrived at
467 the figure $59,477.50, by following their method. The percentage of allowances to net sales shown by this sheet is merely a matter of arithmetic.

"The net proceeds from sales of refinished and second hand sales $57,271.49 and which is put in new cylinder scale business was their percentage of that figure. The three amounts of allowances, namely Exchange scale sales, Toledo Scale Sales and special allowances, and sales of second hand, refinished and used scales were divided on a basis of $60.40% for cylinder scales, leaving a balance naturally to the fan scale sales.

"They took the percentage of the net difference and we took the percentage of the gross items; the net result of course would be the same.

"The amount of net proceeds of sales of refinished and second hand scales which on that method should have been given new cylinder scale business was $57,271.49 and to the fan scale business

$37,548.86. In the case of second hand business there was $18,-286.28 for cylinder scales and $11,989.01 for fan scales.

"The new cylinder scale business is charged with $1,718.14 for loss on agent's accounts on second-hand sales. This is M. M. P. & Co.'s estimate of loss computed on the net sales of second-hand scales not really in the new cylinder business. It is sales of second-hand scales which they took a net figure of and charged against new fan and new cylinder business".

On page 14 of Defendant's Exhibit 22 the whole amount of loss on Agents' Account was shown as $2,844.61. On their report they divided this between fan and cylinder scales on the basis of 60.40% to cylinder and 39.60 to fan, and applied on that basis the loss to the cylinder would be $1,718.14 and to fan scale business $1,126.47.

"The total of Agents' Commissions and losses on Agents' accounts, in the matter of second hand scales as applicable to new cylinder scale business was $20,004.42 and as applicable to new fan scale business $13,115.48. By deducting these two items from the proceeds of sales of refinished and second hand scales the balance to be added to the revenue as the credit of cylinder scale sales is $37,-267.07, and to fan scale sales $24,433.38, that is on the basis of M. M. P. & Co.'s computations.

"The amount shown by M. M. P. Co. covering cost of scales sold, material and labor and overhead expenses as applicable to
468 new cylinder scales is $133,599.57. By using that amount as applicable to cylinder scales leaves a residue of $208,-421.96 to be applied against fan scale business. The total of these two figures represents the cost of sales for the year, this total being $342,021.53, and by charging $133,599.57 to the cylinder scale business they must necessarily charge to the fan scale business the residue or $208,421.96. By their method the cost of cylinder scales sold is 18.411% and the cost of fan scales sold is 43.807%.

"The amount shown by M. M. P. & Co.'s report for commissions to Agents' $175,265.75 was deducted from the total commissions of $357,427.55. On their basis this leaves commissions chargeable to fan scales $151,886.51. You must take into consideration that they charged some to commissions on second-hand. The percentage of commissions in the case of cylinder scales would be 24.152% and against the fan scales 31.924%.

"The commercial and selling overhead as reported by M. M. P. & Co. was $245,602.70. To arrive at this figure they used the gross figure $406,626.99, deducting the former amount from this gross figure leaves the amount as applicable to fan scale business totalling $161,024.29.

"The losses on agents' and customers' accounts was figured by them on the basis of 3% of the net sales as applied to new cylinder scale business and this was $21,770.14 and to new fan scale business $14,273.11.

"The item covering deprecitation on buildings was not taken by us at the figure but is simply placed in Exhibit for the sake of comparison.

"On their basis and on their report the profit on the manufacture of cylinder scales was $95,679.43 and the loss on fan scales was $95,182.55. This is exclusive of vulcanizer and Canadian business.

"The figures of M. M. P. & Co. show the percentage of profit on cylinder scale business as 13.185%. The percentage of loss according to their figures on fan scale business on the basis of net sales would be 20.006%. In the case of cylinder scales the profit according to their figures would be $95,679.43 and the residue which would be the fan business would be a loss of $95,182.55.

Mr. Zane: That's after they had charged in what they called losses.

469 The Witness: This is just the residue taken from the books.

Mr. Zane: Oh no, it is impossible.

The Witness: It was taken right from the books. Their statement as applied against the books, and this is the result of using their figures.

Mr. Zane: In other words, their own books do not show any profit on that business for the year 1911 and they do show a loss on one side of $95,000 and a gain on the other side of $95,000. That one offsets the other so there is no profit or loss on that according to the page we have before us when their own books show a large profit for many years. There you have their method of figuring.

The Witness: This is exclusive of the Canadian business which was I think somewhere around $24,000, so I deducted that from the total profit as shown by the books. It does not leave much profit for the year on the books.

Mr. Zane: It is true you have not accounted for it. Their books show a profit and they paid taxes on a profit.

The Master: What has that to do with this statement here?

Mr. Zane: All in the world. You say this was made from their books. You say these are residual figures.

Mr. Meads: I say these residual figures are the residual figures obtained by taking Marwick, Mitchell's figures, taking out the cylinder, and the rest must be necessarily fan, and in order to show the $95,679.43 as cylinder business he must necessarily show a loss on the fan business of $95,182.55.

Mr. Zane: That shows where you are mistaken. I don't know what you are talking about. I only mentioned this so the Master will not be misled in supposing these figures correspond with their books. They don't. They are doctored figures for the occasion.

The Witness: Taken right from this trial balance here; it was taken from Marwick, Mitchell's trial balance. They were not doctored at all.

Mr. Zane: You cannot make them agree with their books.

Mr. Meads: You cannot make them agree with their books, I will admit that.

470 Mr. Zane: These figures here cannot be made to agree with their books.

The Witness: Surely they can. I can do it right here from this statement.

Mr. Zane: A question is not being asked you. You are advocate enough where you ought to be a witness.

"The figures as shown on Exhibit II, being page 3 of Defendant's Exhibit 21, in the column "Residue, representing new fan scale business" were obtained from this copy of the trial balance which is an exact copy of the trial balance of the books of Toledo Scale Company on file in M. M. P. & Co.'s office as of December 31, 1911 and basis 1 of their report and are in agreement with the books.

"To show a profit of $95,679.43 on cylinder scale business as reported by M. M. P. & Co., would result *on* the profit and loss statement of the company showing necessarily a loss in the fan scale business $95,182.25, on the theory followed by M. M. P. & Co. The balance of $95,679.43 profits shown by M. M. P. & Co., as against the loss of $95,182.55 on fan scale which would follow from their method of distribution, neither of the figures is shown on the books of the company."

In order to arive at a reconciliation of the profit and loss account with the books of the company I have made a working sheet entitled "Toledo Scale Company Basis No. 1," "Summary of profit and loss account for the year December 31, 1911." On this sheet I show the profits as arrived at by M. M. P. & Co. and which includes an allowance for two items which were not taken up on the books, the one being 3% of net sales to cover Agents' and Customers' losses.

"On the combined business according to M. M. P. & Co.'s way of calculating it there would be a profit of $469.88. Now in order to get back to the books they first had a deduction on account of agents' losses totaling $38,887.86. That would have to be added back to the net profit of $496.88. The total of these two items would be $39,384.74. Adding to this figure the profit on the Canadian business, totaling $24,080.32, the total would then be $63,465.06. Deducting from this the loss on vulcanizer business amounting to $4,774.86, leaves a balance of $58,690.20. M. M. P. & Co.
471 in their report allowed nothing for interest on bonded indebtedness nor on capital invested.

The interest actually paid for bonded indebtedness was $1,750.04 and on floating indebtedness was $26,682.86, and the two amount to $28,432.90. Deducting this amount from $58,690.20 would leave a balance of $30,257.30. The book figures show the total of $33,276.25. This makes a difference of $3,018.95 made up of royalties $1,292.71, depreciation taken up in cylinder scale business and used for the purpose of comparison in fan scale business, and the total of the two is $606.26, and there were unlocated differences in M. M. P. & Co.'s statement of $1,119.98, which makes $3,018.95." These figures added back to the $30,257.30 previously obtained results in a total of $33,276.25 profits as shown by the books on the entire business of the Toledo Scale Company for that year. This did not include deductions for interest or other items, such as losses

on agents balances, depreciation, etc., and the un-located differences were the items not contained in the books, and that item of profit was also shown by the Toledo Scale Company's trial balance, which is one of the trial balances which I got from M. M. P. & Co., of which this offered in evidence by complainant is a copy."

On page 3 of Defendant's Exhibit 21 are two pages called Exhibit III. These pages cover a statement of profit and loss accounts of the year ending December 31, 1911, divided as between cylinder and fan scale business on the basis of an actual allotment on the respective business in cylinder and fan scales of all expenses and losses directly chargeable to one or the other, as determined by the detailed analysis of the accounts by P. W. & Co. and adopting M. M. P. & Co.'s allowances as 3% of the net sales as representing a fair charge for losses on agents' and customers' accounts, but before making any allowances for interest on capital invested. This differs from page 1 of the same Exhibit on agents' balances in that I computed 3% of the gross sales instead of 3% of the net sales as shown in the latter Exhibit. The other particular difference between page 1 and page 2 of the same Exhibit is that it does not include interest on capital invested.

472 Mr. Meads: If the Master please, before asking questions, I offer in evidence Defendant's Exhibit 21 of October 26, 1916, and Defendant's Exhibit 22 of October 26, 1916. Those are the two exhibits upon which the witnesses have been examined in detail.

Mr. Zane: If your Honor please, let us reserve our objections on the questions until the cross examination is concluded, and then we can make the objection at that time.

The Master: That's satisfactory. I will pass upon it then.

Said statements, heretofore marked for identification Defendant's Exhibits 21 and 22, offered in evidence, objections as to their admissibility reserved.

WILLIAM ERNEST SEATREE, a witness recalled on behalf of defendant, testified as follows:

Direct examination.

By Mr. Meads:

"The book before me is the General Ledger of the Toledo Scale Company, containing the fiscal year of 1911. This book combines both the fan and cylinder scale business in the same accounts, no distinction is made between the two businesses. On page 90 of this ledger is the account entitled, 'United States Sales (Scales).' That account contains both cylinder and fan scales. The monthly total of sales posted to the credit of this account embraces both kinds of scales, and so in respect to other accounts, such as the Charge Back account on page 96. This embraces both cylinder and fan scales. Exchange Allowances, page 97, in an account entitled 'Exchange

Scales.' That represents allowances made for scales taken in, whether they were in the sale of fan scales or cylinder scales.

Mr. Meads: Now, if the Master please, Mr. Seatree at our request has prepared a summary of the differences between the account as submitted by the plaintiff in this case and the one which is embraced in these two exhibits for the conveniences of the Master, Exhibits 21 and 22. I offered those exhibits, and he has prepared a summary of those differences for the aid of the Master, to see readily where the differences are between his account and the one
473 submitted on behalf of the plaintiff. This, of course, is predicated upon these two exhibits. It is for the convenience of the Master in determining by inspection where the differences are. I will examine him on that, but that's the reason I wished this to be offered. Let it be marked for identification Defendant's Exhibit 23.

(Said summary of differences prepared by Witness Seatree marked for identification Defendant's Exhibit 23, Nov. 21, 1916, C. B. M., Master).

Q. Mr. Seatree, you have before you a document which has been marked for identification Defendant's Exhibit 23 entitled 'The Toledo Scale Company. Summary of Amounts by which the Net Profits of the Cylinder Scale Business were overestimated by Marwick, Mitchell & Company by reason of the Revenues being overstated or the Expenses under-estimated.

(1) Amount of Price Allowances appertaining to Cylinder Scale Sales under or over estimated by Marwick, Mitchell & Co. by reason of their adopting an arbitrary basis of apportionment of the total amount of Allowances, instead of the actual amounts chargeable to Cylinder Scales as shown by each transaction.'

Your first column is 'Class of Allowance;' the second column is marked 'Amount chargeable to Cylinder Scales' with two subcolumns, the first being 'As estimated by Marwick, Mitchell & Co. at 60.40% of the total' and the second column is 'Actual amounts chargeable as allocated by analysis of Price, Waterhouse & Co.' And then your third column is 'Difference under or over estimated by Marwick, Mitchell & Co.'

'On New Cylinder Scale Sales—Incidental to Toledo Scales' under the head of Class of Allowance you have the figure $17,547.09. That figure was taken from one of the exhibits offered in evidence in this case, was it?

A. The $17,547.09?

Q. Yes, appears where?

A. It appears on page 6 of Defendant's Exhibit 22 as being the proportion, 60.40%, of the total amount of Toledo Scale Allowances which Marwick, Mitchell estimated as based on the ratio of the sales as being chargeable to the Cylinder Scale business.

Q. Now, it appears in Exhibit 22 on what page?

474 A. Page 6. It also appears on page 3 of Defendant's Exhibit 21.

Mr. Meads: So the Master may follow this. This is the first point at which he says it appears on page 6 of Defendant's Exhibit 22 and also appears on page 3 of Defendant's Exhibit 21.

The Witness: To avoid confusion, I think perhaps the reference would be better confined to its appearance on page 3 of Defendant's Exhibit 21, which is the statement of profit and loss of the Cylinder Scale business as estimated by Marwick, Mitchell & Company.

Mr. Meads:

Q. Now, in order that the record may show where these items are from, if the Master wishes such reference, Mr. Witness, the next item of $59,824.53, the amount estimated by Marwick, Mitchell & Company as incidental to Exchange Scales, where does that appear in the Exhibits 21 and 22?

A. It appears on page 3 of Defendant's Exhibit 21.

The item of Special Allowances, $13,346.12, appears on page 3. As against the item $17,547.09 in the summary of differences, we have allocated by analysis the actual amount that should be charged, and which is shown on page 3 of Defendant's Exhibit 21, as $23,631.03. On the same exhibit, page 1, is also shown the allowances incidental to Exchange Scales as actually allocated by us, and total $84,793.27. The item, Special Allowances, as allocated by us, totals $8,774.18, and appears on page 1 of Defendant's Exhibit 21. The differences in the last column of this exhibit are obtained by subtracting the figures in columns one and two, one from the other, and the addition following the word 'Together' are merely the additions of the three items above the line on which that item appears.

"The unallocated items amounting to $686.58, which have been added, appear on page 1 of Defendant's Exhibit 21, being the proportion of the unallocated items which were charged by us to the New Cylinder Scales and the totals directly chargeable to new cylinder scales are obtained by adding all the foregoing together in the three respective columns on page 1, Defendant's Exhibit 23."

On page 14 of Defendant's Exhibit 22, appears the item of $1,588.09, as being the price allowance on second hand scales
475 business, as determined by analysis. Of that $1,588.09 we ultimately charged back to cylinder scale business through charging back the balance of the account appearing on page 14 the proportion of 63.928%, as based on the number of units of used scales contributed by the new cylinder scale business, and that proportion is $1,015.23.

On page 14, Defendant's Exhibit 22, we distributed the net result back to the new cylinder and new fan scale business in certain proportions as shown by the foot of page 14 of that exhibit, and in this compilation I have proportioned back the respective items which go to make that net difference."

"The total of $28,182.55 is the net total underestimated by M. M. P. & Co., and is obtained by adding together the figures shown in the

last column, and deducting from these the red one, which is an overestimate.

"On page 3 of Defendant's Exhibit 21 appears the item, 'Amount of Agents'' Commissions appertaining to cylinder scale sales, underestimated by M. M. P. & Co., by reason of their adopting an average rate of $37.49 per scale, instead of the actual amounts chargeable to cylinder scales as shown by each transaction. According to M. M. P. & Co.'s estimate, the amount chargeable is $175,265.75; according to the analysis and allocation as made by P. W. & Co., including the proportions of prorated, unallocated items, the total is $188,941.94 and appears on page 1 of Defendant's Exhibit 21 in two items, $188,229.85 and $721.09.

"On page 1 of Exhibit 23, we have carried forward the sums, $13,676.19 and $28,182.55. The $13,676.19 was obtained by subtracting from $188,941.94 the figure $175,265.75.

From page 3 of Plaintiff's account, for year ended December 31, 1911, Basis 1, and known as Plaintiff's Exhibit No. 40, we obtained the estimate of 16.62% of $182,161.80, equalling $30,275.29. The apportionment of 60.40% charged to cylinder scales, appearing on page 3 of Plaintiff's Exhibit 40, is obtained by merely taking 60.40% of $30,275.29, and giving a result of $18,286.27. The actual amount chargeable as allocated by analysis of P. W. & Co. on second hand scales, and shown on page 14 of Exhibit 22, is $28,792.54. The item of $7,603.54 of forfeited installments appears on the same page, and the two items added together total $36,396.08, of which
476 there is apportionable to cylinder sales 63.928% totaling $23,267.28. The proportion 63.928% is shown on page 14 of Defendant's Exhibit 22. By subtracting from the $23,267.28 the sum of $18,286.27, which leaves $4,981.01, being the difference in the commissions on second-hand business chargeable to new cylinder scale business, and the difference in the commissions payable on new cylinder scale business of $13,676.19, the two together making $18,657.20, and that is the total difference in the amount of commissions chargeable to new cylinder scale business as the result of our analysis, and as the result of the estimate of M. M. P. & Co." amount of Losses on Agents' and Customers' Accounts, charged by P. W. Co. in the sum of $21,016.62. Losses on Agents' and Customers' Accounts actually allowed by M. M. P. & Co. are $21,770.14 the difference totaling $2,246.48.

"The amount of Agents' Losses chargeable to second hand business, as computed by P. W. Co. is $3,374.09, and the amount allowed by M. M. P. & Co., $2,844.61, making a difference of $529.48, of which there is chargeable to cylinder sales, $438.85.

"On page 3, Defendant's Exhibit 21, and also on page 2 of the accounting for the year 1911, Plaintiff's Exhibit 40, appears as a specific item the amount chargeable to cylinder scale business for commercial and selling expenses. This item as apportioned by M. M. P. & Co. on the basis of 60.40% of the total expenses—$243,602.70—on page 1, is shown the amount chargeable to cylinder scales as apportioned by P. W. & Co., and amounting to $226,045.27.

"Page 1 of Defendant's Exhibit 21, shows, as apportioned to

cylinder sales, from second hand sales 62.92⅞% of $31,547.78, equalling $20,167.86. The item $31,547.78 appears on page 14 of Exhibit 22.

"The amount $2,844.67, freight inward on second hand scales does not appear as a specific item on the exhibit, but is a part of the sum of $24,068.34, appearing on page 14 of Defendant's Exhibit 22, this sum being made up of labor and material, $21,223.67, freight inward, $2,844.67, 63.928% or $1,818.55, chargeable to new cylinder scale business.

"On page 3, Defendant's Exhibit 21, is shown the under-statement of the factory cost of new cylinder scales, by reason of esti-
477 mate being below actual cost, as estimated by M. M. P. & Co. at $133,599.57. From this item is deducted an amount representing the proportion of refinishing cost of new scales, viz: 12.09% of labor and material cost, $9,558.18.

"This latter item does not appear as a specific item on Exhibit 21 or 22, but was included by M. M. P. & Co. in the amount of overhead, totaling $59,447.52, which they took up as a charge against the new cylinder scale business, appearing in Plaintiff's Exhibit 40 for the year ended December 31st, 1911. They took 80.17% of the combined labor and material as representing overhead, and that proportion included $9,558.18 as being part of the refinishing cost of used scales, included in the overhead, which total was $21,223.57.

"This latter item does not appear as a specific item on Exhibit 21 but is part of the figure $24,068.24, shown on page 14 of Exhibit 22 and consists of labor and material, $21,223.67, and freight inward $2,844.67. The actual cost of new scale business as determined by us, as shown on page 1 of Defendant's Exhibit 21, totals $143,067.84. The difference of $19,026.45, carried to the last column of page 2 of Exhibit 23, is the difference betwen the last two items.

"The refinishing expense is removed from the factory overhead expense and placed where it belongs.

"On page 3 of Defendant's Exhibit 23, appears the Second Hand Scales Sales, which is the principal item accounting for the smaller amount of sales of new cylinder sales reported by us as appearing on page 1 of Exhibit 22. The item of forfeited installments $12,843.20 appears on page 3 of Defendant's Exhibit 22 as being one of the items accounting for the difference in the amount of charge back reported by P. W. & Co. the total of the two items being $16,854.19. All other adjustments total $1,649.35, this latter being a composite figure which picks up the remaining differences which occur on page 2, defendant's Exhibit 22, and other items which are shown in the working papers which I have not just available, but can find at recess."

The difference between the amount charged by M. M. P. & Co. and P. W. & Co., is $3,345.27, as shown on page 3 of defendant's Exhibit 23, and represents the amount charged by us to new cylinder scale business, in excess of the amount charged by M. M. P. & Co.
478 and the difference represents the proportion of $94,820.33 represented in their ratio of 60.40% and our ratio of 63.928%.

The first increase of second-hand scale sales $1,010.99, appears in

the preceding item (6). It is the same item as appears on page 2, Defendant's Exhibit 22, and the first item on page 3 in the first column." At the top of page 14, Defendant's Exhibit 22, appears the item, "From new fan scales, $7,574.00" this being part of the item $11,584.99, which we have added to the proceeds from second hand sales, the sum of $7,574.00 being the difference between $11,584.99 and $4,010.99, just referred to. These last two items together amount to $11,584.99, of which we apportioned back to cylinder sales $7,406.05, this being 63.928% of $11,584.99. In explanation of this, I wish to state that while we took out of new cylinder scale sales the sum of $4,-01.99, we transferred this item over to second hand scales, because they were used scales. We also transferred to second hand from new fan scales the sum of $7,574.00 the two together making $11,584.99, because the second hand business was treated as an entirely separate proposition. The result is that when we credited back the results of the second hand business, which is shown as a net loss on page 14 of Exhibit 22, amounting to $1,827.45, in effect we apportioned back all revenues and all expenses applicable by treating with net differences in just the same way as if we treated with specific debits and credits. Consequently, the net effect is that we give back to new cylinder scale business $7,406.05, as compared with the $4,010.99, which we took away from it. The reason for putting more back than we took out is because the contribution to second hand business in this instance is larger from fan business than from cylinder business.

"On page 14 of Defendant's Exhibit 22 appears the item $5,246.00 as an addition by P. W. & Co. to second hand sales. This has been transferred from the allowance account, and the proportion which is credited to the new cylinder scale business is 63.928%, or $3,353.66.

"At the top of page 14 of Defendant's Exhibit 22 appears the amount of $2,092.36. This is 63.928% of $3,273.00, this being the amount of charge backs relating to second hand sales, which we transferred from the charge backs on new sales. This makes a net
479 increase as reported by us, in the proportion of second hand sales, as apportioned to cylinders, of $2,092.36, which subtracted from $14,104.98 leaves net $12,021.62, which has been credited to new cylinder scale business.

"Toward the bottom of page 14 of Defendant's Exhibit 22 appears the item $24,083.84 as being the total amount of Forfeited Installments derived from repossessed scales; new cylinder scales repossessed, $12,843.20; new fan scales repossessed, $10,966.14, and second hand scales repossessed, $274.50, the three items totaling $24,-083.84, and of this amount 63.928% or $15,396.31, has been added back to the cylinder scale business. It is well to explain here that we have credited back under the head of 'Forfeited Installments,' as additional revenues on the new cylinder scale business, $15,396.31, as against the amount of $12,843.20, which was taken away from this account in the first instance and is shown at the top of the page. To the extent of the difference between $15,395.51 and $12,843.20, we have really given the new cylinder scale business more credit for forfeited installments than have M. M. P. & Co.

"On page 3 of the same exhibit, we show a total, $27,408.93, as being the additional amount of gross revenue from second hand business. This amount is found by deducting $62,075.12 from the result of the addition of the two figures, $70,980.51 and $18,503.54.

"On page 2 of the same exhibit, we show the proportion of refinishing cost of used scales under stated by M. M. & Co. by reason of such expense being included in General Overhead, and apportioned to cylinder scales, this amount being $9,558.18, which was taken out of Overhead and transferred or added to the proportion chargeable to cylinder scales, based on units contributed.

"The 63.928% of total amount is $63.982% of $21,223.67, which is part of the sum of $24,068.34 appearing on page 14 of Defendant's Exhibit 2, the composition of which I have previously explained.

"On page 14 of Defendant's Exhibit 22 are shown the figures $37,315.25 which represents factory cost of repossessed scales sold as second hand and omitted altogether by M. M. P. & Co. The proportion of that omitted cost 63.928% I have charged the
480 new cylinder scale business the amount of $23,854.89.

"On page 2 of Defendant's Exhibit 21 is shown interest investment at 5% per annum and apportioned on the basis of gross sales. *The* was not allowed by M. M. P. & Co. We apportion to cylinder scales $30,349.50.

"The item 'Miscellaneous adjustments' represents the sum of a few minor items for which I would need to refer to working papers to give you the exact composition. They are however net adjustments which we made in sales as reported by M. M. P. & Co. and ourselves and other adjustments in charge backs. In other words these are the results of taking a miscellaneous lot of debit and credit adjustments and adding them together and this is the final difference between the two. They are really such small items that they are of no significance and simply transfers between the accounts and so on.

(At this point Defendant's Exhibit 23 was offered. Whereupon Counsel for Plaintiff requested the right to reserve a ruling until after cross-examination.)

"The witness stated that the pages of Exhibit 21 should be read as numbered, in order, from the first page.

JOHN ALDEN BOWMAN resumes the stand for cross-examination.

Cross-examination.

By Mr. Zane:

"My attention was first called to the accounting matter of the Toledo Scale Company by Mr. Seatree of our firm. When first beginning on this matter I had a carbon copy of M. M. P. & Co.'s accounting which I was given to look over and at that time I discussed it with Mr. Seatree with reference to certain items contained therein. I think that this discussion with Mr. Seatree took place

the Saturday before Labor Day. The copy of this account of M. M. P. & Co. was given to me by Mr. Seatree. I couldn't tell from the paper itself where it came from although I was told it came from M. M. P. & Co.

"I cannot say just how long I worked on the paper but on the following Sunday I spent two or three hours on the document and on Tuesday morning, the day after Labor Day Mr. Seatree
481 and myself called at M. M. P. & Co. and met Mr. Hall. Arrangement was made for us to examine such papers as necessary. I was at the office of M. M. P. & Co. all that day. Mr. Hall assigned Mr. White of their firm to answer such questions and furnish such papers as were called for by us for this examination. Our examination continued for a period of seven or eight days and during that time I had with me two assistants, Mr. Hansen and Mr. Binkowski.

"After we had finished with our examination of the papers in M. M. P. & Co.'s office we went to Toledo arriving there about the 13th day of September. Upon arrival the first book we examined was a general ledger containing the financial accounts for the fiscal year of 1911. We also examined the combination cash journal for the same year and a number of bound vouchers or voucher files, customers' accounts and sundry other documents.

"These customers' accounts were originals. I think the vouchers were the carbon copies. They were bound in alphabetical order without regard to dates. I estimate that there were about 150 of these bound volumes of customers' accounts. The actual information from these books was taken off by my assistants but I supervised the examination.

"The customers' accounts were bound up in loose leaf form and consisted of various pink sheets, each sheet being a copy of the invoice or order which represented the customer's account and the bills receivable record as well. Most cases contained commissions allowed on the sale. These sheets purported to include the commissions on all sales but there were some that were subject to adjustment that were not picked up and consequently did not appear on those sheets.

"I also referred to the shipping and receiving records although I am not certain that the shipping records were used for reference but I do know that the receiving records were. No, we did not examine the shipping records. There may have been some reference to them, but as for actually examining them I am quite sure we did not, I, myself, verified nothing by shipping records. I don't recall what the shipping record was, whether book or not. I remember in one or two instances of making some references to actual ship-
482 ment of scales, and some one got the information.

"I think the receiving record was a bound book containing a number of columns showing by whom scales were returned, whether by agent or customer. It also gave a description and factory number of scales returned. Sometimes it gave the name of customer; sometimes not, the scales being returned in the name of the agent."

"In addition to this there is a sales record of scales sold in a terri-

tory under a certain agent which record I think is kept in the sales department although I am not certain. These were referred to to ascertain what customer returned a particular scale. This record was kept on cards and showed the dates, agent's name, customers to whom scales were sold, date of selling and such other information. I presume the record was complete. I think you tell from it the customer and kind of scale, but not the price."

"Receiving book that was produced showed that it began November 23, 1910 and ended on March 12th, 1912 so that this book contained information covering the whole year of 1911. The book was used only as an occasional reference. The receiving record has, sometimes, the name of the agent, because I asked a clerk or Zolg, who told me whether the name was an agent, who looked it up.

"The columns are scale number, style number, finish, from whom. In that column in the Receiving book are entered the words in pencil "Not shown." In cases like that where the connection was destroyed the items would be classified by us as undistributed and we did not try to go further to find it. In such cases where it was necessary to use this book to find the customer's name it was only done where the information was not supplied in the vouchers. Then this record was referred to, perhaps fifty times, and reference to it enabled us in some cases to find the customer's name and such other bookkeeping records as were necessary and then this Receiving record was ignored entirely.

"In looking over this Receiving book I noticed a column marked "disposition," however I paid no attention to this column nor did I examine into it.

"I knew that the company carried on this ledger an ac-
483 count called Scale Inventory, although I never saw the document known as Exhibit 8 and called inventory statement for December 1911. From the receiving record I could see whether the scales received was a Dayton or Stimpson or whether it was a Toledo scale."

"These card indexes, which were in the form of a drawer, contained a lot of cards divided into sections with reference to states and counties; contained first the name of the purchaser and the place where he lived. The next heading, 'Source of Inquiry' and the next 'Advertising matter mailed' I do not know the meaning of. It was used as a reference simply to ascertain the name of the customer and from that name to obtain the account under that name in the customer's ledger where I found the information that I required. I referred to the receiving record. The voucher or receiving slip would have the information. If it had, we would not refer to these cards. By the information we could refer to the customer's account." These cards were used to find all the sales that a particular salesman might have made in a given County in his territory, then these names would be compared with similar names in the customer's ledger to see if scale number returned could be applied to the scale number appearing in customer's ledger, and in that way we identified them. In such cases where the receiving book or this

card did not contain a number or style of the scale it was classified by us as unallocated.

"In addition to these card records I also examined the general journal, recording general transactions. It is my recollection that this general journal was a two column ordinary journal. I also referred to the cash book and the salesman's ledger and trial balance book. In addition to this I also referred to the sheets of estimated costs.

The difference between the general journal and the combination journal about which I testified was in that the combination journal contained the transactions of sales, cash, both with customers and agents whereas the general journal contained transactions which related to nominal accounts, closing of the profit and loss and such other accounts which were not with customers or agents.

"Sales of a number of scales made to one person would appear on the combination journal, not on the general journal. My
484 recollection is that with reference to agents' accounts, transactions would appear on the cash journal. There may have been agents' accounts written off, or an adjustment of a balance, or something put through the general journal, but the transactions relating to agents' commissions were carried through the combination journal and not the general journal.

"In the analysis of charge backs and a few other accounts which I would have to refer to the ledger for, it was necessary to refer to the cash book."

"The books called salesman's ledgers were kept by sections and there was a ledger on each section. Some parts of 1911 I think were in five sections. I think in January and February there were five while from March on to the end of the year there were only three sections and there was a ledger for the salesman in each one of these sections. There were two accounts kept with each salesman, a prospective and an actual commission account. I think both names are misnomers."

"In examining into and ascertaining exactly what prospective commissions meant, I found that a sale must be completed entirely, that is the scale must be delivered and the first installment must be paid and the notes and documents must be signed before the commission would be called an actual commission. If those details were not completed it would be put in prospective commission and as soon as they were completed it would be transferred from prospective to actual.

"The unearned commission of the agent might be in either the actual or prospective account. The transfer between the two accounts would be made when the cash payment, execution of the contract and notes supporting the contract and delivery of scales had been completed. In some instances I recall where commissions had been credited before the shipment had been made, which would go into prospective account. The prospective commission account included only prospective commissions on uncompleted sales. By completed sales I mean any sale where a scale was delivered and cash and documents for the rest of the purchase price were delivered.

The trial balance books of the salesmen's ledgers are summaries of the balances of those ledgers drawn off at the end of each month.

"I also examined the sheets of estimated costs. Those
485 sheets were bound in book or loose leaf binders. They refer to tests that were made by the superintendent or his employees or some one in the factory, covering both cylinder and fan scales.

"This book I judge was of the size 8½ x 11 and perhaps three inches thick in a post binder. The records in this book went back as far as April 1st, 1912, and carried information up to June, 1913. It may have been October, 1912, but to my recollection it was June, 1913. I asked for cost sheets prior to April, 1912, and I was told they had none.

"At this point the cost records were produced.

"I went through all of these records in so far as they related to cost of fan scales. I did not examine the cost of cylinder scales except as a refeernce occasionally to those cost figures submitted in M. M. P. & Co.'s report. I examined one or two of them. I don't know what the items meant.

"I found this book bound exactly in the order as it is bound now. I did not examine to see whether the sheets were in the order of dates.

"When I went to find the cost of fan scales I had no other book but I did get information from Mr. Reeves and Mr. Mould.

"Defendant's Exhibit 21 showing an account on pages 1 and 2 was prepared by Mr. Seatree and myself after examination of the books and consultation and represents our joint judgment.

"The figure $111,651.34 which refers to business in second hand, repossessed and otherwise used scales was taken from the sheets of M. M. P. & Co.'s supplemented by the books of Toledo Scale Company.

"Referring to the ledger, page 89 account entitled 'Rebuild Toledo Scale Sales' amounting to $700.00. On page 91 another account entitled 'Second hand scale sales totalling $18,466.79. Page 95, account entitled 'Rebuilt scale sales totalling $75,653.56. These three items totalling $94,820.35. To that total has been added $4,010.99 representing cylinder scales $7,574.00 representing fan scales, which were credited by you as sales account 'United States Sales (Scales),'

page 90 of the general letter. These last two amounts are
486 not shown on the Exhibit of M. M. P. & Co.'s account for the reason that they are included in the amount of $803,657.26, representing cylinder sales and in fan sales which they did not show in this exhibit.

"In the book the amount of $4,010.99 is included in the account headed U. S. sales. Also the item $7,574 is included in this same account on the company's ledger.

"On account of M. M. P. & Co. filed as Exhibit 40 the figures covering revenue for second-hand scales, refinished scales and rebuilt or refinished exchange scales is $94,820.35 and this amount corresponds to the books for those three accounts.

"Item- $4,010.99 and $7,574 were taken out of 'United States

Sales (Scales)' and added to the $94,820.35. I have also added the item $5,246.

"The item $5,246.00 represents sales of second-hand scales erroneously credited to exchange scales and Toledo Scale Allowances and is found as part of the balance on page 97 entitled 'Exchange Scales' and on page 98, entitled 'Toledo Scale Allowances.'

"Of this latter amount, $5,226.00 comes out of exchange scale allowances and $20.00 out of special allowances. Both these items must necessarily be on the books. I find them in the balance of the accounts for which I gave the titles.

"The ledger account entitled 'Rebuilt Toledo Scales' represents the sales of rebuilt Toledo scales. It begins in December, 1911. Prior to December, 1911, Rebuilt Toledo Scale Sales had been thrown in with Exchange Scale Sales and were contained in Second-hand Scale Sales and Rebuilt Scale Sales. So that as the accounts are kept on the books, the three items for the year 1911 contained the rebuilt Toledo Scale Sales."

"The account on the ledger page 91, entitled 'Second Hand Scale Sales' represents the sale of all varieties of second hand scales including fan and cylinder scales of the year 1911 except as to that month of December wherein they began to separate Toledo Scale sales.

"The account on page 95 entitled, 'Rebuilt Scales Sales' represents the sale of rebuilt scales of different varieties for the year 1911. According to the books the sum of the item of all three accounts is $94,820.35. The first addition we have made is $4,010.99. This is taken out of the account on the books called United States
487 scale sales and represents the sale of fan and cylinder scales in the United States during the year 1911, according to the books.

"The total according to this account in the books is the net sum of $1,288,012.58.

Then testimony as follows:

Q. According to the amount on the books that represents the amount of sales of new scales fan and cylinder for the year 1911?

Mr. Meads: I object to the question because he is plainly confining himself in his answer to one book. If he says 'in this book' I withdraw the objection, but this is only one of the books of the company.

Mr. Zane: This is the ledger summing up.

Q. According to that account in the ledger, in the general ledger, this account, United States Sales (Scales) represents the sales of new Fans and Cylinders?

A. According to that account in this book.

Q. Yes.

A. It represents the new scale sales for 1911.

Q. And you find that entered in Marwick, Mitchell & Company's report, New Scales Sold, at exactly that figure, do you not?

A. It is referred to in their report. That figure itself is referred to in their report.

Q. Well, refer to page 2.

A. I have page 2.

Q. And you see there the amount of new scales sold, $1,288,012.58?

A. Yes, sir, it is referred to on that page in that exhibit.

The Master: Well, 'referred to,' what do you mean by that? Is not that the amount they give as shown by this ledger account?

A. They say 'New Scales Sold, Plaintiff's Exhibit No. 8.' It is used in connection with their percentage. They simply use it as a basis on which to base their percentage.

Mr. Zane:

Q. Is not that put down as the total amount of new scales sold?

A. Plaintiff's Exhibit No. 8.

Q. Is not that put down as the total amount of new scales sold?

A. It agrees with the amount on the ledger.

488 Q. Is not that put on their account as the total amount of new sales?

A. No, sir.

Q. What is put down as total amount of new scales?

A. Of all scale sales?

Q. Of new sales.

A. Of Cylinder Scales, net $725,671.39.

Q. Is not the item on their account and does not it read 'New Scales Sold $1,288,012.58;' answer that yes or no.

A. It must be amplified by saying Plaintiff's Exhibit No. 8——

The Master: Can't you answer the question?

A. Yes, I can. I see it reads on there——

The Master: Let me say to you, we will get along better if you will just answer the questions. Now, if there is any explanation needed, on the redirect examination counsel for defendant can call for your explanation. Of course, where it is necessary to make the answer you give intelligible, that's all right.

The Witness: That's what I am trying to do, your Honor.

Mr. Zane:

Q. You have already answered you never saw Plaintiff's Exhibit 8.

A. I have not.

Q. So you don't know that the item in that Plaintiff's Exhibit 8, being the statement of the business of the Toledo Scale Company for the year 1911, is contained in that Exhibit No. 8, you don't know that?

A. I don't know, I never saw that.

Q. So you don't know that the same item is on this exhibit No. 8, New Scale Sales, $1,288,012.58?

A. I did not see that exhibit.

Q. That total correspond*ence* with the total on the books, does it not?

A. Yes, this total corresponds with the total on the books.

Q. And in Exhibit No. 8 that sum is stated New Scales Sold?

A. Well, I don't know in this Exhibit No. 8; if this is No. 8, then it agrees with the books, $1,288,012.58, on this Exhibit No. 8. (Examines document.)

Q. You see it marked Plaintiff's Exhibit No. 8?

A. Yes.

489 Q. $4,010.99 which is the first item that you have added was added upon what theory? Well, first let me ask: That is added upon the theory that the books are wrong?

A. As to that account, yes.

Q. That's wrong?

A. Wrong by that amount, yes, sir. It is wrong by that amount as to Cylinder Sales.

Q. As to Cylinders?

A. Yes, sir.

Q. On what theory do you say that the company's books are wrong?

Mr. Meads: I object. He has not said the books are wrong. He said this particular entry is wrong.

Mr. Zane: Don't interfere, that's part of the books.

Mr. Meads: Yes, it is part of the books but it is only part of it; that's my objection.

Mr. Zane:

Q. Upon what theory do you say that that account in this general ledger is wrong for new scales sold?

A. Upon the fact that an analysis of the working papers of Marwick, Mitchell & Company disclose that there was included in this account entitled United States Sales (Scales.) page 90, a number of sales amounting to $4,010.99 which were really second hand scales and were included in their account for new scale sales.

Q. How do you know that they were second hand?

A. From their working papers, they so stated.

Q. What working papers do you refer to?

A. A summary of the Sales Analysis which they made. I will produce it if you wish.

Q. It is on the same theory that you next add Fans, $7,574 taken out of this United States Sales (Scales) Account and put into the Revenues from Second Hand sales?

A. That was ascertained by analysis of the Fan Scales accounts which we abstracted from Marwick, Mitchell & Company's papers supplemented by an examination of the vouchers and customers' accounts.

Q. And to the extent of $7,574 that is a change from this account on page 90 of the ledger?

A. Yes, sir, and from the Fan Scales as they were drawn off by Marwick, Mitchell & Company.

Q. Yes. Now, the next item, $5,246, which you have
490 added and which is made up of two items, $5,226 taken out of Exchange Allowances?

A. That is based on an actual analysis of the account entitled Exchange Scales and it was discovered in that analysis that there was included or were included the sales of a number of Second Hand Scales aggregating $5,226. That was arrived at by an examination of the account and the supporting documents, viz., the vouchers and customers' accounts.

"On page 97 of the ledger the account entitled, 'Exchange Scales,' represents the return of all varieties of Exchange Scales which are taken in exchange as part payment on the sale of either new cylinder new fan or even second hand scales sold in a few instances. Without referring to my working papers I cannot say in how many instances that account includes exchanges in second hand scales.

"The account on page 98 of the General Ledger entitled, 'Toledo Scale Allowances' represents scales manufactured by Toledo Scale Company taken as part payment for the sale of new fan or cylinder and perhaps in some cases second hand scales.

"From the analysis of the account called Exchange Scales on page 97 it would appear that the account is intended to total the amount of money that is allowed on sales of scales for second hand scales other than Toledos taken in part payment of the selling price of a particular scale.

"The account on page 98 of the General Ledger entitled, Toledo Scale Allowances, represents the total of the amount of money during the year 1911 that was allowed as deductions from the purchase price of scales sold for Toledo Scales given in Exchange.

"In M. M. P. & Co. account the total for exchange scale allowances is shown as $99,047.24 which is the balance on the books.

"The item Toledo Scale Allowances shown on M. M. P. & Co. statement of $29,051.57 conforms to the books, Plaintiff's Exhibit No. 8, shows exchange scale allowances $99,047.24 and Toledo Scale Allowances $29,051.27.

"M. M. P. & Co.'s report and Exhibit No. 8, both show figures that correspond to those shown by the ledger.

"I have corrected the accounts in this accounting submitted here,
and allocated them in their proper accounts. My reports
491 as to those accounts do not agree with the totals contained in the general ledger.

"The next item found under the head of Revenues in the last column of the business is second hand scales on page 90 Defendant's Exhibit 21 is $3,273. It cannot be shown from the general account in the ledger. This item is extracted from the debits in United States Sales (Scales), page 90, and Toledo Scales Charged Back."

"This item represents the second-hand scales which were previously sold and were returned, afterwards repossessed and returned,

so that it is a reduction in this column of revenues, the last on page 1 of Exhibit 21, to $108,378.34.

"The next item is also a reduction from the gross revenue of $215. This represents deductions from gross sales value of firm sales, i. e.: price allowance on scales sold in trade for old scales taken in and charged according to the amount actually allowed on each scale sold. This item is not identified on the ledger, but was found by an analysis of this account. The amount is taken out of Toledo Scale allowances account, page 98 and forms a part of the balance of that account, you might say, and would go in reduction of the balance of that account.

"The next item of $1,175.67 in the revenues column is also a deduction from gross revenue. I cannot point to that item on the ledger. It is included in other items on page 97 of the account entitled 'Exchange Scales,' which means exchange scale allowances.

"The next item $189.75 is also a deduction from gross revenue. That particular item cannot be identified in the account. It is a part of the account on the general ledger on page 99 entitled 'Special allowances,' which was determined by analysis, you might say. The balance of that account is $22,096.23 and is found on page 2 of M. M. P. & Co.'s accounting basis No. 1, for the year 1911.

"This item is not on the books. It is a combination of three charges."

"My figure for the net revenue from second-hand sales is $106,790.25. According to the accounts on the general ledger known as second hand scales, refinished scales, Toledos, refinished exchanges, the total is $94,820.35, and M. M. P. & Co.'s total and ledger total is the same.

"The theory upon which this account of P. W. & Co. is
492 evolved by myself and Mr. Seatree, contained on pages 1 and 2 of Defendant's Exhibit 21, is that the second-hand scales constituted a separate and distinct department of this business, and this determination was reached after a consultation with Mr. Seatree to state the accounts that way. Mr. Seatree concurred, to the fullest extent, in this second-hand scale department form of account.

"I did not find that the Toledo Scale Company bought second-hand scales as second-hand. The only way in which it got second-hand scales was to take them in exchange for scales it was selling as a manufacturer.

"In accordance with that theory of a second-hand scale department, wherever a Toledo Scale had been sold new and was repossessed by the company, I have put that scale in the second-hand department so far as we could find them, no matter whether cylinder or fan, and we also put all the forfeited installments where a purchaser had bought a new cylinder or fan scale, and had failed to carry out the transaction by paying the price, but instead of that the Company had repossessed itself of the scale, all these forfeited installments we have thrown into the second-hand department as a revenue, but not as a revenue arising from the sale of second-hand scales.

"The Company, to some extent, made up its books on that theory of a second-hand department, but not to the extent I have made it. It kept separate the sales of the second-hand scales; that is, to some extent it did, except for mistakes and errors that they made when accounting for some that went into the United States sales; they also accounted for the cost of renovating second-hand scales, renovating and refinishing repossessed scales and the 'freight in' on scales coming back. I understand that the refinishing and reuilding department performed the work on repossessed scales, if any was done, as well as work on second-hand scales. I had means of ascertaining whether the finishing of new scales was done in the refinishing department. The Company kept on the books, on the general ledger, page 142, an account entitled 'Rebuilt Department Expense' into which all expenses of rebuilding and refinishing are charged. From that account I was not able to tell whether any part of the payroll or any part of the labor items was put
493 on new scales beyond what the ledger account shows. I was not specially able to find as to one account, but as to all other accounts I was able to find what enables me to say that part of the revenue arising from repossessed sales went into the $94,820.35.

"In the case of all three of these accounts the accounts show that revenues from the sale of repossessed scales went into the total of $94,820.35, the revenue from second-hand scales. As to the first account 'Rebuilt Toledo scales sales,' I cannot answer that any item shows the sale of a repossessed Toledo scale that had been sold as new. It cannot be done as to the account 'Second-hand scale sales' or 'Rebuilt scales sales. In the case of all three they lost their identity when they come in and cannot be identified. I could have traced some of the repossessed scales if I had desired, but not all, because the records are not clear. They are rebuilt and their numbers are changed. I know they are rebuilt because the account says so, but I do not know that those were not scales taken in exchange. I cannot point to any item of a repossessed scale rebuilt, because they lose their identity when repossessed. I got information from Mr. Zolg that in some cases a repossessed scale had its number changed and was sent out under a different factory number."

"I knew that far the largest part of the scales repossessed did not come back to the factory, and therefore would not show on the receiving record. In many instances the agent took back the scale and sold the scale again, not as a new scale, but, I think, as a second-hand scale."

"I know that because when a scale was repossessed a composite journal entry was made showing that the scale had come back in, that is, had been repossessed by the Company whether it was returned here or to one of the branches or agent's headquarters I cannot say, but in that case this composite entry would be made, relieving the customer. I say that the composite entry shows that a repossessed scale was sold as second-hand, if it were sold as a second-hand scale."

"That is all with reference to the return of a repossessed scale.

"When such scales are repossessed the journal entries made cred-

ited the customer's account with the unpaid balance of the
494 sale originally made and a corresponding charge, to Charge Backs or Debits to Sales. The same composite journal entry recorded a charge to the agent for the commission on the unpaid balance and a corresponding credit at that time to Commission's account.

"If the scale was resold at that time, instead of the entry being a charge to Charge Backs account, it was charged to another customer, that journal entry being supported by a copy of the new customer's account, giving in detain the terms of sale, number of scale, and so forth. If the scale was not sold at that particular time, the entry was as I have above stated. To my recollection there was no further entry as to the return of the scale."

"In case a scale had been sold and the purchaser of the scale had absconded with the scale so that the scale was not repossessed in the Journal entry they were frequently charged to Charge Backs—to Debits to Sales account, which really is erroneous."

"Exactly the same kind of entry on such entries as I saw would be made whether a scale was lost or whether they got the scale back. I have seen entries of that kind."

"On Exhibit 21, page 1, under the heading of deductions from gross sales are shown certain items. The first of these is Allowance on Toledo Scales taken in, $23,631.03. That means the allowances on the purchase price of new scales sold for Toledo scales taken in exchange as part of the purchase price, that account on the books means that it is the allowance on the purchase price of new scales or Toledo scales taken in exchange as part of the purchase price, and that account would show what the Toledo scales taken in exchange cost the Toledo Scale Company in deductions from the selling price of new scales so far as that account recorded the scales of that character taken in, and the intent and purpose of the account was to record them."

"According to the account on the general ledger entitled 'Toledo Scales Allowances' shown on page 98, the balance is $29,051.47, that balance being divisible between cylinder, fan and second hand scales. M. M. P. & Co. in their account charge against new cylinder scales 60.40% of this $29,051.47 or $17,547.09. That division was made between fan and cylinders by using the arbitrary per-
495 centage of 60.40, making $17,547.09. I don't know how they got 60.40 more than it says 60.40% of total sales. Referring to page 6, Defendant's Exhibit 22, shows the balance of Toledo Scale Allowances as arrived at by us at $27,618.72. The difference between that amount and the amount shown on the general ledger is $1,432.75.

"The next account on the ledger showing deduction from sales is called Exchanged Scales, page 97, and is intended to show the scales of other makes taken in. The balance of that account is $99,047.24. On M. M. P. & Co.'s account this amount is divided on the basis of sales. In our account as shown on page 7, of Defendant's Exhibit 22 we raise this to a total $107,177.52, this balance differing from

the balance shown on the ledger by $8,[illegible]0.28 because of the redistribution to this account from other allowance accounts.

"The accounts on the general ledger which show the sales of scales of other makes taken in are called Rebuilt Toledo Scale sales, Second-hand Scales sales and Rebuilt Scales sales. There may be some scales of other makes in Toledo scales re[illegible]. They may have been Toledo scales. I don't know, unless I would refer to my papers, because that account was analyzed. No, it was not analyzed. There may have been some scales of other makes got in there by accident."

"The amount of the sales in Rebuilt Toledo Scales is $700.00. The amount of Second-hand Scales sales is $18,466.79, and of Rebuilt scales sales $75,653.56.

"Other accounts in which will be found the sales of scales of other makes and as shown by page 7 of Defendant's Exhibit 22 are called Exchange Scale Allowances account and Special Allowances account.

"On the general ledger is an account entitled 'Rebuilt scales sales' and the balance on this account is $75,653.56. In M. M. P. & Co.'s account this balance is used as a memoranda on page 2 of their Exhibit under the title of Basis 1, account of 1911, and is used in order to arrive at an arbitrary percentage. It is put in there as a part of a deduction for allowance for Exchanges and Second-hand sales.

"On M. M. P. & Co.'s report they add together Exchange Scale Allowances, Toledo Scale Allowance and Special Allowances making a total of $150,194.94. Then they deduct from that the following three items, Second hand sales $18,466.79, Refinished Toledo
496 Scales $700.00, Refinishing Exchange Scales $75,653.56, making a total of $94,820.35.

"On the third page of Exhibit 8 the amount shown for Exchange scales allowances for the twelve months ending December 31st, 1911, is shown as $99,047.24. This corresponds to an account shown on page 97 of the general ledger which is intended to show all allowance for exchange scales.

"On Exhibit 8, on the same page, you find an item 'Refinished scales exchanges,' under the head of 'Sales' $75,653.56. I cannot assume that the allowance account on exchange scales represents the same kind of article as refinished scales exchanges, because they have no relation to one another. For the purpose of answering your question about your assumed instance, I will make the deduction, but they have no relation to each other. The difference between the figures appearing on Exhibit 8, the first being Exchange Scale allowance $99,047.24 and Refinished Scales Exchange on the same Exhibit, $75,653.56 is $23,393.68.

"The balance as shown by the general ledger for Toledo Scale Allowances is $29,051.47. The balance shown on the account, however, was only started in December of 1911 and only takes in part of the sales of rebuilt Toledo Scales for the year 1911. The rest of the sales of Toledo Second-hand scales for year prior to December, 1911, will be found in either one of the accounts known as Rebuilt Toledo Scales, or Second-hand Scales sales, or Rebuilt Scale Sales, and possibly in the United States Scales account, although it was intended in the United state Scales Account only for new cylinder and fan

scales. But there were other scales taken in there. Certain second-hand scales are scattered all through."

"The report of M. M. P. & Co. sales of second-hand scales totaling $94,820.35, is made up of the balance shown on the Rebuilt Toledo Scales account on the general ledger $700.00; the balance on the Second Hand Scales account is $18,466.79 and the balance on the Rebuilt Scales account $75,653.56. To that total we have added $11,584.99 as Second hand Toledo scale sales previously included in new cylinder and fan scales sales. This amount was determined by an actual analysis of the accounts so far as the fan scales were
497 concerned and from the papers of M. M. P. & Co. as to cylinder scales.

"We did not analyze the three accounts totaling $94,820.35 to find out how many repossessed scales were included in those sales. The figures were taken from M. M. P. & Co.'s papers and verified with these accounts on the books and assumed to be correct. I did not see the sheets prepared by M. M. P. & Co. showing how many cylinders were included in these three second hand scale accounts. I did not see any document in those papers of M. M. P. & Co.'s that showed 68 second-hand Toledo cylinders and 84 rebuilt Toledo cylinders were included."

"Included in new cylinder and fan scales were 168 fan scales totaling $7,574.00, and 39 second hand Toledo cylinder scales at avlue of $4,010.99 were sold as new.

"On page 1 of Exhibit 21, under the heading of Allowances on Toledo scales taken in, shown as $23,631.03, there were 315 scales, exchange scales of all makes. The company took in both computing and non-computing scales, which was determined from an examination of customer's accounts. I do not know the difference between computing and non-computing scales, but the allowance- were marked N. C. on customers' accounts, which means non-computing. The amount allowed on non-computing scales was $5.00 and sometimes $10.00. In some cases it was all charged to the agent and sometimes half of it to the Allowance account.

"The figure arrived at, covering 315 scales represented by allowances on Toledo scales, was $23,631.03, and taken from the amount entitled 'Toledo Scale Allowance.' The words 'Allowances on Toledo scales taken in,' which amounted to 315, means that if there were other scales taken in besides Toledo scales we did not adjust them as between Toledo scales and other scales. The same explanations covers the items entitled 'On scales of other makes taken in.' In those scales of other makes taken in may be included Toledo scales. The general ledger accounts purport to and intend to represent in the one case Toledo scales, and in the other case scales of other makes taken in, but they do not. You have to go back to the books of original entry to determine whether they do or not. We did not make the adjusting entries to put it in proper shape as between Toledo Scales taken in and scales of other makes taken in. The
498 results of our analysis do not appear on page 1 of Exhibit 2 as regards scales taken in between those accounts.

"The Allowances for scales of other makes taken in amount to $84,793.27 and covers 2,629 scales taken in.

"In the item under the heading of new fan scale business, Toledo Scales taken in, totalling $3,571.44, covers 120 scales. I do not know how many were cylinders.

"The next item under the heading of new fan scale business allowances for scales of other makes taken in totalling $15,580.18 covers 1,108 scales. The $215.00 covering Second Hand Toledo Scales represents 4 scales, the second hand column, scales of other makes taken in, totalling $1,175.67 cover 62 scales. Our accounts does not show how many were cylinder. In our account, special allowances covered no transactions of a scale taken in exchange.

"On page 14 of Exhibit 22 we show the item $5,246 as representing the sales of Second Hand scales erroneously credited to Toledo Scales and Exchange Scales sales account. I am unable to state how many scales are represented in this amount as no analysis was made of it.

"In my direct examination I said I had obtained from the books of Toledo Scale Company the cost of production for the year 1911. I said that the figure we arrived at was $284,153.55 representing total cost of production of new fan and cylinder scales whereas the estimated cost was $246,418.57 or a difference of $37,734.98.

"The cost of production is arrived at by dividing the account into two groups. One called manufacturing cost of Production and the other Stock accounts. In the manufacturing cost of production we have the value of materials, supplies and so forth used in the production during the year amounting $83,618.32. This being the balance of the material account as shown on the company's ledger on page 111 and entitled 'Material.' The next item is for productive labor totalling $80,960.74 on page 105 of the company's ledger entitled Direct Labor. The next item is factory overhead expenses as follows:

Indirect Labor $28,510.92, page 107 of Company's ledger.
Factory supplies 13,259.27, page 120 of Company's ledger.
499 Experimental $11,926.75, page 122 of Company's ledger.
Tools and Patterns—$9,543.63, page 126 of Company's ledger.
Packing and shipping—$12,783.64, page 130 of Company's ledger.
Lumber—$1,698.25, page 131 of Company's ledger.
Horse, wagon and feed—$9.00, page 132 of Company's ledger.
Trucking—$1,442.14, page 133 of Company's ledger.
Maintenance, Repairs, & Alterations—$12,322.99, page 134 of Company's ledger.
Power, heat and light—$5,086.86, page 136 of Company's ledger.
Superintendent and Factory Office—$10,072.66, page 137 of Company's ledger.
Miscellaneous & mfg. Exps.—$3,871.07, page 140 of Company's ledger.
Insurance—$2,634.09.
Total—$113,161.27.

"The total of those accounts, namely materials, productive labor and overhead expenses makes $277,740.33 from which has been deducted the estimated cost of supplies and accessories sold during the year $2,496.20. This latter amount appears in the account in the general ledger page 197 entitled 'Repairs on scales,' $1,712.88 to which we have added the sales of Accessories and other small items which together totalled $2,496.20. We have estimated that there was no profit on that—that the cost and the selling price were approximately the same, so that figure is deducted from the $277,740.33, leaving a balance of $275,244.13, representing the cost of material, labor and expenses chargeable to production of scales for the year. That

"Referring to page 30 of the ledger entitled 'United States consignment inventory'. That is the balance from the former year from the ledger. The account purports to be the scale inventory. The figure we used for the inventory for the first of the year was $185,633.88. The inventories are what we referred to—to the original documents. We did not get that from the ledger. We arrived at it by adding together the following scale inventories balances on January 1st, 1911, United States consignment $167,-
500 258.26, Factory Scales Inventory, $18,025.62, South American Consignment, $350.00. I disregarded no items. The two items not included in these figures, Inventories of rebuilt and second-hand, $3,896.25, and Loaners, $2,991.40, were put in to a Second Hand Stock account.

"At the end of the year the balance on the scale inventory account we made was $120,289.19. I did not arrive at that by excluding scale inventory item November 23rd, U. S. Competition' exchanges $29,068.68. It was not arrived at with that figure. That simply appears in the document. I arrived at $140,298.19, inventory at end of the year, by taking the balance of $170,912.75, which represents the inventory of all scales on hand December 31st, 1911. Of that amount we ascertained from the inventory that $140,-289.19 were new cylinders and fans. The difference, $30,623.56 were second-hand, loaners and rebuilt scales, and so forth. The amount, $30,623.56 is not shown on the ledger. I examined the Scale Inventory account on the ledger, and attempted to reconcile it by reference to the inventory documents, which we had access to. But it is merely a summary of the details which appear in the original document or inventory summary itself. I had the inventory sheet.

"The rate of valuation of the inventory at the beginning of the year was 33 1/3 and 25% of the selling price. I cannot say when it was 25%, without reference to the original documents. At the end of the year it was 33 1/3% all through.

"On the same basis, using the figure 7,643, representing the number of fan scales sold, as shown by page 1 of Defendant's Exhibit 21, and divided into the estimated cost, gives approximately $16.01 as the estimated cost of each fan scale sold. Dividing $459,152.12, the net fan sales of 7,643 scales, into the estimated cost of $122,-349.92, gives approximately 26.65%. In our account the cost of

production of new cylinder scales is 20.231% of the selling price.

"Dividing 4,632, the number of new cylinder scales sold, shown by Defendant's Exhibit 21, page 1, into the adjusted factory cost figure of $143,067.84, gives approximately $30.89 per scale. On the same basis, dividing 7,643 new fan scales sold, as shown by
501 Defendant's Exhibit 21, page 1, into the adjusted cost of $141,085.71 gives approximately $18.46 per scale.

"We have turned over to the Second-hand Department 665 new cylinder scales, 810 new fan scales, 315 Toledo exchange scales, which latter come from the item, page 1, Defendant's Exhibit 21, of $23,631.03. They go into the Second-hand Department to be disposed of as scales. We have also added to the Second-hand Department 2,629 scales taken in as allowances on scales of other makes, also 160 Toledo scales taken in exchange for fans, also 1,108 scales of other makes taken in exchange for fans. The disposition of those scales have been treated in the business, second-hand, repossessed and otherwise used scales. I have also added to the Second-Hand Department $11,584.90 for second-hand Toledo scales included in cylinder and fan scales as new, representing 168 fans and 39 in cylinders, included in cylinder and fan scales sales as new. The 4 scales and 62 scales taken on allowances in the second-hand department, the transactions relating to them were included in the second-hand department. The total of those figures is 5,920. The gross revenue of the Second-hand Department is $111,651.34. From this amount we have a deduction for charge backs on second-hand scales of $3,273. Therefore the new revenue on second-hand business is $108,378.34. It is my belief that the major part of the 665 new cylinders and 810 new fan scales were disposed of in the Second-hand Department, and the revenue from them went into the amount of $111,651.34."

"In our analysis of the account we found some instances where a repossessed cylinder or fan scale was sold over again as a new cylinder or fan. I do not remember how many cases I saw where a repossessed was sold as a second-hand."

The- follows this testimony:

Q. Now, the validity of your account, throwing all the repossessed cylinders or fans into the Secondhand Scales account, depends upon the assumption that all of those repossessed scales sold as second-hand scales, does it not?

A. So far as — were able to determine.

Q. I say the validity of your Second-hand Scale Account
502 in this Statement of yours depends upon that assumption, does it not?

A. Not entirely.

"Q. You have thrown them all into the second-hand scales, have you not?

"A. Yes, sir.

"Q. Then the correctness of your Second-hand Scale Account must depend upon the correctness of your action in throwing all

those repossessed cylinders and fans into the Second-hand Department; now is not that true? Answer it frankly.

"A. Just repeat the question.

(Question read:)

"A. So far as the cost of those scales are concerned.

"Q. Now, are you able to identify any part of the $111,651.34, gross revenues from the sale of the second-hand scales, as being derived from the sale of repossessed Fan or Cylinder Scales?

"A. Not in specific cases, but they are in there, some of them are in there and included therein.

"Q. How many?

"A. I cannot say exactly how many.

"Q. Approximate it.

"A. I cannot.

"Q. Is it twenty thousand dollars?

"A. I said I could not approximate it. I would not attempt to approximate it.

"Q. Can you tell whether it was more than twenty thousand dollars?

"A. I would not attempt to approximate it because during the course of the examination I did not give that feature sufficient examination to be able to make such an estimate.

"Q. Can you tell whether it is more than ten thousand dollars?

"A. I will not commit myself to an estimate.

"Q. Answer that yes or no.

"A. No, I will not answer the question that way. I will not commit myself to an estimate.

"Mr. Zane: Will the Master instruct him to answer the question?

The Master: He says he can't answer it.

503 "Mr. Zane: I want a specific answer because I am going to bring him down to one thousand dollars.

(Question read as follows: Can you tell whether it is more than ten thousand dollars?)

"Q. (continued). Answer that yes or no.

"The Master: You can tell whether you can tell, can't you?

"A. I can say I can't.

Mr. Zane:

"Q. You can't tell whether there is one thousand dollars from repossessed scales in the gross revenue from second-hand scales put into your account as $111,651.34?

"A. I cannot say that I can tell or estimate it.

"Q. Now, assuming that you sold in the second-hand Department the total of 5,920 scales from your net amount of $108,378.34, what average was that per scale?

"A. I can't assume that because it is not a fact.

"Q. I say assume it and then tell me what the average per scale.

"The Witness: If the Master please, that 5,290 has no relation to that $108,000.

"Mr. Zane: We object.

"The Master (to the witness): That's counsel's matter and not yours.

The Witness: It is drawing a false conclusion and not right.

Mr. Zane: He wants to argue.

"The Master: You are not the judge of that. Counsel makes an assumption. If he is wrong about it, he must suffer and not you.

"A. Dividing 5,920, the figure given me by Mr. Zane, into $108,378.34 is approximately $18.31.

Mr. Zane:

Q. If you divide that number of 5,920 into the gross revenue, $111,651.34, what is it?

Mr. Meads: I guess I will have to object here, if the Master please. There is nothing in this record at the present time to show that all those scales which he has mentioned were sold. Maybe fifty per cent were scrapped, maybe forty. Counsel is putting to this witness a question upon the assumption that every one of those scales that were repossessed were sold.

Mr. Zane: I say assume.

Mr. Meads: I object to the question because there is
504 nothing in the record on which he can make that assumption. It is attempting to get a tricked deduction to either deceive the Master or somebody. There is nothing in this record to show that 5,900 scales were sold. Two-thirds of them may have been junked.

The Master: This is the cross-examination of an expert witness, and wide latitude should be allowed and counsel I think has the right to make assumptions that the other side might think were not proper assumptions, and they can't do any harm if they are improper.

Mr. Meads: He is simply doing a lot of arithmetic. He is dividing 5,900 into $111,000 or some other figure. There is not a scintilla of evidence in this case to show that 5,900 scales were sold. You have to assume that the purchase price was represented by that $111,000 of a certain number of scales, and there is not that evidence here.

The Master: That goes to the weight of the testimony after it is in.

Mr. Meads: The witness has attempted to show that in making these divisions he is doing a purely ministerial act not warranted by anything in the record and counsel has objected to it and asked to have it stricken out.

Mr. Zane:

Q. Now, divide, will you, the 5,920 into the gross revenue, $111,-651.34.

A. Dividing 5,920, the figure given me by Mr. Zane, into $111,-651.34 is approximately $18.86.

"The witness was asked to produce the inventory sheet for the beginning of the year 1911 and for the end of that year. He produced a book which he said was the trial balance book. He was then asked to produce the original inventory sheet. He produced a book and said 'This is a summary of the inventories', and said they were the original inventory sheets that he saw.

"From the summary of the inventory marked 'Inventory scales January 1st, 1911', I believe the number of cylinder scales can be arrived at, although I did not attempt to. In my extensive and detailed analysis I did not arrive at the number of new cylinders in the inventory for January 1st, 1911. I can arrive at it, but not without long drawn complications, analyzing and proving it up. It does not show what scales are valued at 33⅓% or at 25% of list.

505 The values shown are all at list prices. There are two inventories, the United States consignment and the factory sales inventory, and they are different in that particular. The United States consignment is not on the inventory book that I am testifying from now. It is in another book. The United States consignment inventory is a compilation made from the trial balance book, but does not show the number of fans and cylinder scales on consignment. On this sheet the scales are valued at the list prices. The percentage of list price at which scales were carried on U. S. Consignment inventory is approximately 31.84%. The list value is $525,271, and the inventory $167,258.26. I am unable to state what part of the scales in the total of $525,271 was placed on the inventory at a valuation of 33⅓% and 25% respectively. I would have to inquire of Mr. Zolg whether it could be ascertained from the book. I got my information that part was valued at 33⅓ per cent and part at 25% from the inventory binder, the inventory sheets that are mentioned as being the inventory. That applies to factory scales, but not to U. S. consignment scales. In this book I mentioned before I saw some sheets which related to inventories of scales at Windsor, and I found that in some cases the valuation placed on the inventory 25% of the price list, and when I found that the U. S. inventory valuation placed on consignment, the U. S. consignment Scales, did not agree by calculating it at 33⅓%, I inquired of Zolg the reason for it, and was informed that some of the scales taken up in that inventory were valued at 25% of list price, while others valued at 33⅓% of list price. The scales inventoried at the Windsor factory were not inventoried as part of the factory scales, I merely mentioned the Windsor factory as being the source from which I obtained the information as regards the pricing of the inventories of U. S. Consigned

scales. It gave me a clue when I saw the figure 25% contained on that sheet.

"The total inventory of factory scales of new cylinder and fans is $18,025.62. That is at the reduced valuation, not at list price. The percentage of list prices at which these scales were inventories is approximately 27.77%. The value figure being $64,895. There are no Windsor items in the $525,271 U. S. consignment nor in the factory valuation, $64,895.

506 "On the inventory sheet December 31st, 1911, the total amount of United States consignment sales is $385,159.33, valued at 33⅓, or $128,386.44. The factory scales inventory is $34,470, valued at 33⅓%, or $11,490. The South American consignment inventory, $1,238.25, valued at 33⅓%, or $412.75.

"Referring to the ledger or scale inventory account at the beginning of the year, the second-hand items in the account would be Second-hand and Rebuilt Scales, $3,896.25, Loaners, $2,991.40. That is the whole second-hand inventory. At the end of the year the inventory is $40,623.56, which is loaners and second-hand scales, together. The item Scales Inventory Account, November 23rd, U. S. competitors' exchanges, $20,068.68, would enter into the second-hand inventory balance. It was charged to the Stock account which I referred to. I would call this account a Second-hand Scale Stock account. I would charge to that account the $3,896.25 and $2,991.40 inventory of second-hands and loaners, on hand at the beginning of the year. I would also charge $20,068.68, U. S. competitors' exchanges, $3,816.68, factory competitors' exchanges, of November 23rd. These would be debits. I would also charge the cost of repossessed sales; but I cannot draw a stock account in accordance with this scale inventory account on the books."

"The item of November 23rd of $20,068.68 and $3,816.66, I carried into the stock account. I do not know what valuation that inventory item was made upon. Of my own knowledge I do not know where it came from, nothing except what it is on the books and the account. I did not treat it as being on the books as an inventory value of January 1st, 1911. On January 1st, 1911, all that appeared on the books for second-hand inventory valuation, consisted of two items, one called the Rebuilt and Second-hand scales, $3,996.25, and Loaners, $2,991.40. The inventory value at the end of the year of second-hand scales was at 33⅓% of list prices. I did not try to identify the list prices of second-hand scales. They come in the ordinary course of business as an allowance on new scales sold without regard to their value, simply an excuse to make an allowance. The inventory balance that entered was $30,623.56. That was a credit to the stock account, which, after including all

507 the items mentioned on other adjustments, together with the cost of cylinder and fan scales repossessed, transferred to Second-hand Stock account from new Scales Stock Account, of $67,938.81, leaves a balance of $37,315.25. I do not recall having answered that the figure $37,315.25 was an arbitrary figure taken as 20.231% of the $93,386.17 cylinder charge backs, and 30.727% of the $59,168.15, fan scale charge backs. I do not recall what you

refer to. I may have answered in that way, but I don't recall just now when or under what circumstances."

"The items that make up the total of $25,068.34, entitled 'Factory of Renovating and Refinishing Repossessed Second-hand and used Scalles,' are taken from the ledger page 145, entitled 'Repair Department,' $21,223.67 and on page 160 account, entitled, 'Freight on Scalles, (Incoming)' $2,844.67.

"On Plaintiff's Exhibit No. 8, account entitled 'Prepaid freight,' shown on page 162 of the ledger, represents freight on out-bound. I would not take the Freight In-Bound to be for anything but scales. I do not see an account on the trial balance of the ledger which shows freight on material in-coming. I did not analyze the Freight Inbound account to find out what items were included in it. All I know about it is the title of the account. I made no detailed analysis or comparison between this in-coming freight and the receiving record to find out whether or not the items corresponded in any way to the receiving record."

"I did not see a production book or book showing how many new scales had been produced in the factory during the year 1911, nor did I examine any records in the factory in an attempt to see how many new scales had been produced in the year 1911.

"I don't know whether 4,632 scales were all the cylinder scales produced during 1911, nor whether 7,643 were the new fan scales produced in the factory in that year. I do not know that the total cost of production for fan scales applies to 7,643 fan scales. It does not apply as to both cylinders and fans.

"In the manufacturing cost, we show an item for material of $83,-618.32 in our production account. This figure represents the balance of the Material Account shown on the Company's ledger on page 111. The Direct Labor account balance on the ledger is $80,-508 960.74. In M. M. P. & Co.'s account, these two figures are used as a memorandum to produce a total. The Indirect Labor shows a balance of $28,510.92. The Supplies Account $13,-259.27, the Experimental Account, $11,926.75. I made inquiry as to the Experimental Account and was told it was research work. The balance of Tools and Patterns Account was $9,543.63. I made no inquiry to ascertain whether any of it was chargeable to cylinder scales. Packing, Lumber, Horse and Wagon, Feed, Trucking, Maintenance, Power, Heat and Light, Superintendent's Salary, Miscellaneous Expenses and Insurance, were all balance taken from the general ledger. I made no effort to determine where Mr. Zolg carried the item of Insurance.

Referring to the Material account on the general ledger, no detailed analysis of the Material account was made. I see on this account items marked C. J. credits, but I am not able to say what they are for. I was told that there were some items turned over to the Canadian factory at cost, some parts of scales—I do not know from the books at what figure. I do not know whether any of these charges contained any charge for factory over head or for labor. No apportionment was made to the Vulcanizing Department for factory

overhead. I did not in my account apportion any part of the factory overhead to the Vulcanizing Department.

"I believe the Material Account had already been apportioned to the Second-hand Department as the Repair Department was operated in a separate building from the factory proper, and the materials which had been transferred to the Repair Department were credited to the Material account. There is no factory expense apportioned from the General Factory overhead to the Second-hand Department. None of the total of $913,161.27 is apportioned to the Second-hand Department."

"I do not find anything on the books to show whether any part of the Experimental Account belong- to the Second-hand Department. I assume that a part of Tools and Patterns account belong- to the Second-hand. I assume same is true of other accounts known as Lumber and Trucking. As to Maintenance, Alterations and Repairs, and Power, Heat and Light, I cannot say. Superintendent's office, salaries, I assume a portion of that belonged there. For Indirect labor, I cannot say. I cannot say whether any of the
509 Indirect Labor belonged to the Canadian Department. I assume that none of the Experimental, Tools and Patterns, Packing, Lumber, Trucking, belonged to the Canadian Department. I assume that because I was told that any transactions between the Canadian business and the United States business took in only such parts as were shipped from this point to there, and they were all at cost and the cost would include a proportion of the expenses.

"So far as I am able to tell from the books, there were no shipments to customers directly from Toledo to Canada. It is my recolletcion that there were none. I will not be certain as to that, because I did not examine to find out where the scales went that we credited in U. S. sales (scales) account.

"Then testimony as follows:

"Q. Now, the item which you have on the 2nd page of your account Exhibit 21, is an addition to the revenue of the Second-hand Department of all of the forfeited installments on pulled and repossessed scales, is it?

"A. It is not. On the contrary, it is applied as a reduction of the expenses in refinishing and renovating those scales that were returned in the Second-hand Department.

"Q. But you have a credit there which reads "Credit for installments forfeited on pulled and repossessed scales applied against cost of transportation to factory, renovation, refinishing and expenses incidental to subsequent resale thereof, less agent's commissions allowed on such installments?"

"A. Yes, sir.

"Q. Now, then what was the total amount of installments forfeited?

"A. I refer you to page 14 of Defendant's Exhibit 22. The total amount of the forfeited installments was $24,083.84.

"Q. Now, in what account did you find on the books that $24,083.84?

"A. It was found in several accounts.
"Q. What were they?
"A. U. S. Scale sales.
"Q. How much of it in there?
"A. I do not know, not just at this moment. It would re-
510 quire a long calculation, or rather the putting together of a lot of these figures.
Q. Have not you got the working sheet showing how you made this?
A. Yes, I have a working sheet.
Q. Produce the working sheet.
A. Sure.

Mr. Zane: Your Honor, we want the paper produced by the witness, which is marked for identification.
The Witness: I am simply following instructions (handing paper referred to to Mr. Meads).
Mr. Zane: It is awful to have such an exhibition of this.
Mr. Meads: To crown this awful abuse we will give you one.
Mr. Zane: And give us one with the statement attached.
Mr. Meads: Yes, we will give you one with the statement attached (handing Mr. Zane papers).
Mr. Zane: Now, if your Honor please, this book which is marked inventory sheet, these inventory sheets, and the inventory trial balance or whatever they call this book trial balance book, we would like to have the privilege of examining tonight.
Mr. Meads: You can't take the books away from here.
The Master: Is there an objection to that?
Mr. Meads: No, they can stay here as long as they want them.
Mr. Zane: We don't want to stay here.
Mr. Meads: They are books not in evidence. He has gone out and gotten our original books. We object to his taking them from the factory. That's a little too far—things that are not exhibits in the case.
The Master: If there is an objection made, I don't think that I have the power to enter an order to take the books away from there. It would probably save some time, Mr. Meads.

(Discussion.)

Mr. Meads: I think I shall have to adhere to my former determination. They are at liberty to examine the books here and a room may be set apart for that purpose, but I cannot consent to the taking of these books and papers to a hotel.
Mr. Zane: Then I will give notice here and now to have
511 these two books, these four which are here, one of them is entitled 'Receiving Record,' at the top of each page 'Toledo Computing Scale Company, Toledo, Ohio, U. S. A. Record of Scales, Sample Case and Supplies Received.' The next book is entitled at the top of each page 'Trial Balance,' the next book is a book of inventory sheets which has been produced here, and the next book is the general ledger. We now give notice for the production of those

books at the Master's office next Monday morning and we ask your Honor to make an order that those books be placed at the Master's office in Chicago next Monday morning. I want to add to that also this book entitled on the outside 'List of Employes, Estimated Costs and Piecework Price Sheets and Abandoned Parts,' the book is so entitled on the outside.

Mr. Meads: Well, is the Master going to rule on that motion now? It will be determined somewhat as to where we will be next Monday morning.

Mr. Zane: No, we want them there.

The Master: I will not make any ruling about it now and will postpone that until we are ready to leave here.

Mr. Zane: All right.

The Master: Then I will pass on the question.

"The total of the forfeited installments was $24,083.84, as shown in Exhibit 21, page 2. Commissions allowed on these installments was $7,603.54. I had no information as to all the repossessed scales, requiring refinishing, repairs or rebuilding. I intended to put into this Second-hand Scales account all cost of refinishing repossessed scales. I did not put in any work on repossessed scales at the branch office or by the agents unless it was in that item, page 1, Defendant's Exhibit 21, Factory cost of renovating and refinishing repossessed, second-hand and used scales.' The figure given included the item of freight inward. The amount was made up of the account on page 145 of the ledger, entitled 'Repair Department,' amounting to $21,223.67, and Freight In-coming on scales, page 167, amounting to $2,844.67, the two items added together making a total of $24,068.34. I see that that does not include any cost at the branches or by agents for repairing or refinishing repossessed scales, and I would have to say that to my knowledge there was not any. I made no attempt to analyze the Branch Office accounts, nor to
512 ascertain how much of that expense was for refinishing repossessed scales, other than to consult with the officials, and learn that refinishing and rebuilding was all done at the factory, and such scales as required work of that character to be done on them were returned to the factory. Mr. Zolg told me that.

"Q. Did you know that there was a refinishing department at San Francisco?

"A. I did not. On the theory that the installments forfeited were intended to defray the expenses of refinishing, or placing in a salable condition, the scales on the one hand, or to reimburse the Company for loss on scales on the other hand, I took the forfeited installments which on the books were credited to new scale business as a part of the income from new scale sales, and transferred them to the Second-hand Department; and so far as the facts could be obtained, I intended to make the Second-hand Department bear all the expenses of repossessed second hand scales, including the cost, and to let the Second-hand Department obtain all the revenues from those scales. I did not take into consideration whether the Plaintiff was entitled to all of the money as revenue derived from cylinder scales. I mean to say that so far as the legality of it was concerned I was not attempt-

ing to pass on that. I knew what part of the forfeited installments were made out of cylinder scales, but I did not know what part of those forfeited installments were made out of a scale containing the infringing device."

Q. So as a matter of fact these forfeited installments applying to Cylinder Scales were made out of a scale containing the infringing device?

Mr. Meads: I object. This witness is not competent to say whether the device is an infringing device or not. The patent is not on a scale, it is on a drum. All the witness has attempted to testify to is Cylinder Scales. As to what it contained or what it didn't contain he does not know.

Mr. Zane: I said containing an infringing device.

The Master: Objection overruled.

The Witness: What am I expected to answer?

(Pending question read as follows: So as a matter of fact these forfeited installments applying to Cylinder Scales were made out of a scale containing the infringing device?)

A. Were made out of, that portion of them which were
513 found to have been made out of Cylinder Scales are shown as Cylinder Scales.

Q. You don't know whether the Cylinder Scales contained an infringing device or not?

A. I do not I am frank to say.

"The Agents' Commissions, totaling $7,603.54, I have not deducted from forfeited installments $24,083.84 on the principle of charging second hand scales with all of the commissions paid on forfeited installments. It is deducted from the forfeited installments before the balance was taken into the second-hand scale business.

"Q. Well, is not the effect of it to change—what commissions do $7,603.54 represent?

"A. The answer to that question is found in the title of it. It says 'Less Agent's' commissions ($7,603.54 allowed on such installments).'

"Q. Exactly. Then by subtracting that amount from the revenues of second hand scales, considering forfeited installments as a part of those revenues, you have charged to second hand scales commissions or forfeited installments, have you not?

"A. No, sir.

"Q. What have you done with the commissions on forfeited installments?

"A. They have been charged against the total of the forfeited installments, and the balance thereof have been carried to Second Hand business.

"Q. Is not that in effect making the $7,603.54 an expense of the second-hand Department?

"A. No, sir.

"Q. If you had not deducted $7,603.54 in the column for revenues

of the business under Second-hand Repossessed, etc., what would have been your figure?

"A. $24,083.84.

"Q. Now, that would have been a reduction. Now, when you deduct from that $24,083.84 the $7,603.54 you thereby decrease the revenues of the second-hand Department?

"A. Well, you are calling, Mr. Zane, the $24,083.84 a revenue and in this accounting it has not been construed as such. It is applied against the expenses.

"Q. Exactly. Therefore you are applying it against $7,603.54 as an expense, are you not?

"A. As an expense specifically against the $24,083.84.

514 "Q. In the end then the $7,603.54 is an expense of second-hand scales?

"A. It is not.

"In my account I make the loss on second-hand scales $1,827.45 divided between cylinder and fan scales on the basis of units contributed. The total number of units was 5,647. The number of cylinder scales sales was 3,610 and by new fan scales sales 2,037, made up of 665 repossessed cylinders, 810 repossessed fans, 315½ Toledo exchanges, contributed by cylinders, 119½ Toledo exchanges, contributed by fans, 2,629½ exchanges of other makes contributed by cylinders, and 1,107½ scales of other makes contributed by fans, making a total for cylinders 3,610, for fans 2,037. I did not have four dismembered scales. I think this division fair and reasonable. Mr. Seatree directed it and I thought it fair and reasonable after he explained to me what his theory of it was."

"By pro rating as between cylinders and fans, each item of expense in the second hand account, and pro rating each item of revenues on the basis of units contributed by the cylinder and units contributed by the fans, in the end we would have, chargeable to cylinders $1,168.25, and chargeable to fans, $659.20, making a net loss of $1,827.45.

"Q. You did make the division of the loss on the unit basis, didn't you?

"A. Yes, sir, under the direction of Mr. Seatree.

"The Master: Strike out the last part there.

"Mr. Zane:

"Q. Yes. That means that all expenses in the second-hand Department are divided on the unit basis, and all revenues are divided on the unit basis, does it not?

"A. Yes, sir. It ultimately works out that way.

"Q. Now, you have all expenses divided on the unit basis. Just put a stop mark there and satisfy your mind as to that. Then go on to the next proposition which is that you thought that division of expenses among all scales in the second-hand department on the unit basis was fair and equitable, you thought so, didn't you?

"A. Well, I had no thought about it. As a matter of fact I was confused as to the real disposition of that and referred the matter

to Mr. Seatree who worked out the theory of dividing the results of that department.

"Q. But after he told you about it you thought it was fair and reasonable, didn't you?

515 "A. Yes, and I still think it is fair and reasonable.

"Q. Now then, it is therefore on the idea that the expense was fairly and equitably divided according to the total number of scales in the 2nd Hand Department?

"A. I don't understand the question, it is not complete.

"Q. Well——

"A. You speak of the total number of scales in the 2nd Hand Department. Do you refer to the sales or contributions to the department or just what do you refer to when you say the total number of scales?

"Q. You have told us the total number of scales in that department contributed by the Cylinders and Fans were 5,647. You have also told us that the expense in the 2nd Hand Department were divided equally among these 5,647 scales, have you not? Why? Is it possible you don't understand?

"A. You have confused it. It is not divided equally among those 5,647. That is used as a basis for dividing the results of the 2nd Hand business.

"Q. Well, of course, the results of the 2nd Hand business are made by balancing expenses against revenues, are they not?

"A. What I will answer is that the results of the 2nd Hand Department are arrived at by charging the expenses against the revenues.

"Q. And your difference you find to be $1,827.45 in favor of expenses?

"A. In favor of losses.

"Q. Well, the expenses exceeded the revenues by that figure?

"A. That is the interpretation laid on it.

"Q. The interpretation. Is not that your account?

"A. You are confusing expenses with losses and sales.

"Mr. Zane: I move to strike out his statement I am confusing anything.

"The Master: It may stand.

"Mr. Zane:

"Q. Let me put it to you this way. If you pro-rated as between Cylinders and Fans each item of expense in the 2nd Hand account and if you pro-rated each item of revenue in the 2nd Hand account and you did that pro-rating on the basis of units contributed by the Cylinders and contributed by the Fans, in the end you would

516 have chargeable to Cylinders $1,168.25 and chargeable to Fans $559.20, making a total loss of $1,827.45, wouldn't you?

"A. That would be the net result."

Q. Yes. Now, if that principle applies to the 2nd Hand Department, why would not it be fair and equitable if you should apply it

to the division of the Commercial and Selling to be charged to Cylinder and Fan business by pro-rating the Commercial and Selling Expenses on the basis of units contributed by the Cylinders and units contributed by the Cylinders and units contributed by the Fans?

A. Your question is complex so that I cannot answer it in the manner in which it is put.

Q. Well, let me go back to this account with which I supposed you were familiar, having constructed it.

The units of new Cylinder Scale business, the units contributed are——

A. Where are you reading from?

Q. According to your account.

A. On what page?

Q. First page. The units contributed by the Cylinder business to the new Cylinder Scale business are 4,632, are they not?

A. Yes, sir.

Q. The units contributed by the Fan business are 7,643?

A. Yes, sir.

Q. You have down below Commercial and Selling Expenses, have you not?

A. Yes, sir.

Q. Charged as an expense against the sales?

A. Yes, sir.

Q. You have divided those Commercial and Selling Expenses on your report on what basis?

A. On the basis of gross sales.

Q. Yes, and what is your percentage of gross sales upon which you assigned part of the Commercial and Selling to Cylinders: Look on page 13 of your Exhibit 22.

A. The percentage is 55.96.

Q. And to Fans?

A. 36.23%.

Q. Now, the question I asked you is if the unit contribution basis is correct for apportioning the expenses of the 2nd Hand
517 Department, why is not it correct for apportioning the Commercial and Selling item which you have before you?

Mr. Meads: As applying to new business do you mean?

Mr. Zane: Certainly, it could not apply to anything else.

A. Answering the first part of your question, it is not the expenses, but the results of the 2nd Hand Department which are pro rated back to the new Scale business whereas the Commercial Expenses are pro-rated on a basis of gross sales which is a common practice in accounting.

Q. Why didn't you admit just a little while ago that the expenses in the 2nd Hand Department were pro rated on the unit basis, didn't you admit that a little while ago?

A. I reiterate that you are confusing expenses and revenues. I say the difference between those two which is the result of the department was pro rated back, the net result of the department.

Q. Well, if you pro rate a result which is made by subtracting one thing from another, is not it the same as if you pro rated those two things and then made the subtraction?

A. It is in effect.

Q. Yes, that's an arithmetical thing?

A. Yes.

Q. All right. Then as a matter of fact the result of your 2nd Hand account is that you have pro rated expenses that you have put in the column of expenses in the 2nd Hand account between Cylinders and Fans on the unit basis and you have pro rated the revenues you put in the revenue column on the unit basis, have you not?

A. Yes, in effect.

Q. Now then, if you pro rate first and then make you- deductions, you would have your amount of $1,168.35 apportionable to Cylinder business and $659.20 apportionable to Fans, would you not?

A. Yes.

Q. Now, why would not it be fair and equitable in the new business to take Commercial and Selling Expenses and apportion them between Cylinder business and Fan business on the basis of
518 the units contributed, viz., 4,632 Cylinders and 7,643 Fans?

Now, that's a question calling for your judgment as an accountant.

A. It is my belief that it is more equitable to divide or pro rate the commercial expenses of a business on the sale of the company's own products on a basis of gross sales.

Q. Why is that your belief?

A. I believe it would otherwise unduly burden——

Q. Fan business, is that what you mean?

A. If you permit me, I will answer your question as intelligently as I know how. I believe where a business is required to be divided into departments and the selling values of the product in one department as against the selling values in another department are at wide variations, that it is more equitable to divide commercial overhead expenses on a basis of the dollars and cents values in the departments.

Q. Well, commercial and selling expenses are what kind of expenses?

A. They are just as you call them, commercial and selling expenses.

Q. Well, you know what you put in to make up your commercial and selling?

A. Yes, sir; in this particular instance, yes, sir.

Q. What did you put in?

A. I will give you the totals of the account. Cash Discount—do you want the dollars and cents?

Q. No, I don't want the dollars and cents, I want the items.

A. Just let me answer this question this way, that in the commercial and selling expenses as they are known on the company's books in this accounting I have included cash discounts, collection expenses, Fidelity bonds, prepaid freight on sales, kitchen, legal expense, litigation, office pay roll, stationery and office supplies, patent expense, postage, quantity discounts, recording orders, rent, taxes,

telephone and telegraph, general expense and district managers' and salesmen's expense accounts, hotel expenses, prize contents, miscellaneous selling expense, advertising, various branch office expenses, and 100% Club Convention expense.

Q. Now, these last items on the company's statement, viz., district managers' and salesmen's expenses, hotel, prize contests, mis-
519 cellaneous, advertising, branch office expenses, 100% Club, are all included in Commercial and Selling?

A. Yes, sir, they are, they are included in the total of Commercial and Selling.

Q. Now, the unit rule applied to rent for instance so far as floor space is concerned would be fairer than the division by the value of the respective sales, would it not?

A. It depends upon what rent you have reference to, the kind of rent; it would be on the kind of rent you have reference to.

Q. Well, so far as selling a Fan or a Cylinder scale is concerned, the space that is made use of would be the same, would it not?

A. I cannot answer that question.

Q. What is your item rent there for?

A. It is a small account of rent totaling $1,700 which I believe is rent of some office or some other premises that the Company occupy.

Q. It is an office devoted to the selling, is it not?

A. I cannot say definitely.

Q. You don't know?

A. No.

Q. Well, suppose it were an office devoted to the selling, then that rent would be more fairly apportionable on the unit basis than on the sales basis, would it not?

A. I would say no.

Q. So far as taxes are concerned, that would be more fairly apportionable on the unit basis, would it not?

A. I would say no.

Q. So far as repairs on scales are concerned that would be more fairly apportionable on the unit basis, would it not?

A. I would say no.

Q. And yet you have done it in the 2nd Hand business?

A. It has not been done that way, the way you refer to.

Q. Didn't you apportion the repair expense in the 2nd Hand business on the unit basis?

A. You are confusing the repair expense that you refer to. I do not know to what you exactly refer when you say spreading
520 the expense or pro rating that particular item on the unit basis.

Q. Have not you got expense for repairs in the 2nd Hand Department?

A. Yes, sir.

Q. Have not you pro rated as between Cylinders and Fans that expense on the unit basis?

A. On the units contribute- from the sales or from the business conducted in the new Cylinder and Fan Scale departments.

Q. Exactly. We understand that. Then you have pro rated the

repair expense in the 2nd Hand Department on the unit contribution basis, have you not?

A. The repair expense to which you refer is pro rated.

Q. All right. Now then, having prorated repair expense in the 2nd Hand Department on the unit basis, do you think it wrong to pro rate repair expense in the Commercial and Selling on the unit basis?

A. You continually refer to the repair expense being pro rated in the 2nd Hand business. It is not done. The repair expense charged in the 2nd Hand Department is pro rated to the new Cylinder and Fan Scale business on a basis of units of old scales used, and so forth, contributed.

Q. Yes. Now, why should not the same thing be done in the new scale business?

A. For the reason that I gave before which is the best of my opinion.

Q. All right. Now, the item of recording orders, what do you understand that means?

A. Nothing more than the account itself states.

Q. Well, don't you know what that means, recording orders?

A. I did not go into that account as it only amounted to $973.73.

Q. Well, you don't know what it means?

A. Oh, it has something to do with the recording of the orders coming in, but just exactly what it has reference to I didn't examine into.

Q. You mean recording them where, in the office I suppose?

A. I don't know just where they were recorded, but it has
521 something to do with some special expense of recording that, did it not?

Q. You don't know that that refers to the recording of some document so as to preserve a lien on the scale?

A. It may have reference to that, and now you mention it I believe I was told that that was the purpose of that expense account.

Q. Very well. Does it cost any more to record such a mortgage as to a Fan than it does as to a Cylinder?

A. I don't know as to that.

Q. Now, assuming that the recording charge would be the same, that item would be more fairly apportionable on the unit basis, would it not?

A. I would say not.

Q. Now, take the item of postage. Does a stamp on a letter in regard to a Fan Scale cost any more than the stamp on a letter as to a Cylinder Scale?

A. I don't know.

Q. Oh, you do know, don't you?

A. I do not know. A postage stamp, a two cent stamp on a letter of a Fan Scale or a Cylinder Scale—it is ridiculous.

Q. Don't you think that that item of postage would be more fairly apportionable on the unit contribution basis in the new scale business?

A. I do not.

Q. Why?

A. For the answer which I gave previously.

Q. Well, repeat it now for our edification.

A. It was a long answer to a question that I can't exactly repeat unless she reads it back now.

Q. You want your answer read over so you can make it again?

A. I will correct that by saying that in the case of all these expenses I have mentioned to you that answer I gave applies.

Q. Now, tell me in regard to postage, confine yourself to that alone, why do you say that that expense in Commercial and Selling is not more fairly apportionable between Cylinders and Fans on the basis of units contributed to that business by the Cylinders and Fans respectively?

A. Because I think it is more equitably distributed on a basis of gross sales.

522 Q. Why do you think so?

A. Because it is more equitable.

Q. Why do you think it is more equitable?

A. For the answer given previously.

Q. Tell us again why.

A. For the reason that where a business must necessarily be divided into departments and the selling values of the products of the various departments are at wide variance that it is more equitable to divide the general expenses of selling and administration on a basis of gross sales.

Q. How does that apply to postage stamps?

A. Just how do you mean, 'how does it apply?'

Q. Your statement last made, how does that apply to postage?

A. Well, it applies to postage as well as the other expenses that would go to make up the general expenses.

Q. That's the best answer you can make, is it?

A. It is the best answer I can give to the kind of a question you have asked me.

Q. Yes. Now, take the item Patent Expense, did you ever consider that item as to what it was expense for?

A. Not as to each item of expenditure contained therein. The title of the account appeared to me to be expenses in connection with patents which is customary in all lines of business.

Q. And patent litigation?

A. I don't know as there was any litigation. It relates to patent expenses. There may be litigation items in there.

Q. Did you ever consider the proposition as to whether any part of that patent expense arose from the fighting of this very case involving the infringement of the Cylinder patent?

A. I did not.

Q. Now, the item of Office Supplies, what do you understand Office Supplies to be?

A. Sundry small items of pencils and paper and ink and blotters and that sort of thing.

Q. Then would not you think that those expenses in Commercial

and Selling were more fairly apportionable between Cylinders and Fans on the unit contribution basis?

A. No, sir.

523 Q. Why? The same reason as given before?

A. The same reason as given before.

Q. Well, let us go to Office Pay Roll, what do you consider that Office Pay roll to cover, large items 79,000 and some odd hundred dollars, that's the pay roll for the people working in the office?

A. It purports and I believed is intended to be, yes.

Q. Now, does not it take just as much clerical work upon a sale of Fan Scale as it takes upon a sale of a Cylinder?

A. I don't know whether it does or not.

Q. Well, would not you think as a fair accountant, divesting yourself of any interest, merely speaking in a perfectly impartial way, would not you say that that office expense was more fairly apportionable between Cylinder and Fan business on the basis of unit contributions?

A. I would not.

Q. Now, in your 2nd Hand Department, is there any office expense?

A. There has been a portion of the office expense charged to 2nd Hand business based on the gross sales of the 2nd Hand business.

Q. Yes. Now, that office expense was apportionable in the 2nd Hand business on a basis of units, was it not?

A. Not in the 2nd Hand business on a basis of units.

Q. Units contributed, was it not?

A. No, it was not. The office pay roll charged to the 2nd Hand Department in that Commercial and Selling item shown in that account was charged to that department on a basis of the scales of the 2nd Hand Department.

Q. The amount you found on the basis of sales, but after you had gotten the amount you charged it on the 2nd Hand Department, didn't you?

A. Yes, sir, it was charged——

Q. As an expense?

A. Yes, sir.

Q. Now, when it was charged there as an expense you divided it between the Cylinders and Fans on the unit contribution basis, didn't you?

A. Yes, sir.

Q. Now, having done that in the 2nd Hand Department,

524 why would not the same thing be equitable in the new scale department?

A. Because it would unduly burden either one or the other departments of the new scale business.

Q. Well, in this particular case what would it unduly burden?

A. Well, by reason of their having been more Fan sales, dividing that expense would unduly burden that department.

Q. Unduly burden Fans?

A. Yes, sir.

Q. And that's not what you are doing, unduly burdening Fans in this accounting, is it?

A. Well, I am trying to be fair although you try to make it out to the contrary.

Q. Now, take the items of Freight Outbound, did you examine to find out whether it costs more to ship out a Cylinder than a Fan?

A. No, sir.

Q. Well, generally speaking as a man of common sense and of ordinary knowledge, you would say that the cost of freight for a Cylinder and a Fan was about the same, would you not?

Mr. Meads: I object to that question, your Honor. There is no evidence in this record anywhere as to the weight of the Cylinder or Fan Scales. There is nothing anywhere that warants that question.

Mr. Zane: I am asking for his judgment.

The Master: If this witness found anything in the books or records of account that he examined that throws any light on that question, he may answer.

A. I found nothing.

Mr. Zane: Didn't you make an analysis of that Freight Outbound Account?

A. No, sir.

Q. Did you make an analysis of the Freight Inbound Account?

A. No, sir.

Q. Now take the item of Bond Interest, what does that represent?

A. Interest on the outstanding bonds.

Q. Those bonds are on what? What is the security for the bonds?

A. I don't know now.

525 Q. You don't know whether it is on the factory or what it is on?

A. I didn't examine into the security of the bonds.

Q. Well, now, supose it were on the Factory as a security would not that interest be more fairly apportionable on the unit contribution basis as between Cylinders and Fans in the new scale business?

A. I would say it would be incorrect to apportion it to either department on any basis, that the expense itself is an incident to financing the business.

Q. Yes.

A. And is a separate charge to the profit and loss to the company.

"In our method of accounting we charge to the Second-hand Department the cost of the repossessed cylinder and fan scales $36,435.37 and gave new scales a credit of $36,435.27 in the stock account. We arrived at this figure by taking the estimated cost furnished by the Company of both cylinder and fan scales, and adjusting it in respect of the understatement of the total cost of all scales.

"Q. Do you mean that? Think about it for a moment. Your figure $36,435.27 is made up of two amounts, one cost of cylinders, and the other cost of fans, in each instance being repossessed scales

turned over to the Second-hand Department. Now, how much of that $36,435.27 is cylinders?

(No answer.)

"Q. Let me put a question. We will not wait. The repossessed cylinder cost in the charge back account $93,386.17, didn't it?

"A. No, it did not.

"Q. Well, that was what was allowed in the Charge Back Account for repossessed cylinders?

"A. It was not allowed. It was the selling price of those scales.

"Q. Taken back, the scales were taken back and their amount was charged there against the gross sales?

"A. The selling value was charged against the gross sales to arrive at the net sales.

"Q. $93,386.17. Now, what percentage of that did you take?

"A. That is the figure I am trying to find in my papers.

526 "Q. I will read you from your former answer in which you refer to the item you first spoke of, $37,315.25, which is put in the column cost and expenses of second-hand Business opposite the words 'Estimate Cost of each scale sold furnished by the company, including Factory overhead Expenses, $37,315.25.' The question asked you was this:—"Q." The next item of adjustment is in manufacturing cost, to wit, factory cost of repossessed scales sold as second hand or used, including purchases, cost of bought scales, not allowed for by Marwick, Mitchell & Company. $37,315.25. In the column 'As reported by Marwick, Mitchell & Company' marked nil, what is that item?

"A. That is the cost of the scales which were pulled or repossessed, both cylinder and fan scales, that were afterwards sold as second-hand scales, and this figure is the cost that applies to these scales.

"Mr. Zane: Where did you get that?

"Mr. Meads: In the report by Marwick, Mitchell & Company is there any allowance made for that cost?

"A. There is no allowance made for that cost.

"'Q. They have taken the cost on net sales of new scales?

"'A. Yes, as far as I can find there is no allowance made for this cost, for the cost of those scales.

"'Mr. Zane: Where did you get it?

"'Mr. Meads:

"'Q. From what source did you take this item?

"'A. The cost of these scales is arrived at by finding the cost of the production for the year and in the case of fan scales or cylinder scales first we will say, that the cost of scales approximated about 30%, and these scales which were returned were——

"Mr. Zane: Cost of scales sold?

"'A. Cost of scales sold, yes.

"'Q. Approximately 30% of the selling price?

"'A. Yes, 30% of the cost of fan scales and 20% of the cost of

cylinder scales, and those were the ratios of costs which were used in arriving at this figure, to which was added items of purchases made by the branches on these repossessed scales or purchased scales, so that this figure here represents the cost of the second hand scales repossessed or purchased.'

"Now, having had that evidence read over to you, where
527 did you get your figure for the cost of Cylinder Scales turned over to the 2nd Hand Department, did you take 20% of $93,386.17 in the Charge Backs Account?

"A. I did.

"Q. Very well, what did you get? Do you mean to say you have not got this on your working papers?

"A. It was figured out on a machine. It would be approximately eighteen thousand——

"Q. I want the exact figure.

"A. Well, the 20% is an approximation.

"Q. I don't care what it is. I want that exact figure, both the percentage used and the result as it was figured out on the machine, what was your result?

"A. I am figuring it for you now.

"Q. Well, but you have the machine figure there, have you not?

"A. No, that machine figure has passed into oblivion.

"Q. You never had it, all right.

"A. Why, no. It was a Reuters Calculating Machine.

"Q. Didn't you put it down somewhere?

"A. No, sir, I did not. The percentage of Cylinder was approximately 30%.

"Q. Of Cylinders?

"A. Of Cylinders was 20%.

"Q. Approximately. What was it exactly?

"A. Approximately 20%. It would be a fraction of a thousand or two thousand one way or another.

"Q. Why can't you tell us what it was exactly?

"A. I didn't go beyond perhaps two or three places in making the decision.

"Q. Tell us what those two or three places were?

"A. I can't tell you now what they are unless I would go to all that work of calculating them out.

"Q. How would you calculate the percentage?

"A. By taking 20% of the figure——

"Q. No, no. How would you get this 20% you are talking about? How would you get that?

"A. Well, in testing out the cost, the adjusted cost which I spoke of in previous testimony, it appeared that the cost of sales as applied against the gross sales on Cylinders was approximately 20%, being the estimated cost as furnished by the company
528 and adjusting them in respect of the understatement.

"Q. Yes. Now, didn't you see right on the sheet before you your percentage?

"A. Yes, that is the cost.

"Mr. Meads: What are you pointing to?

"The Witness: He is pointing to 20.231.
"Mr. Meads: On what page?
"The Witness: Page 1 of Defendant's Exhibit 21.

"Mr. Zane:

"Q. Now, to get that per cent what figure did you divide into another figure to give your figure of 20 that you are talking about. Just tell me the two figures you divided one into the other? Well, if you can't very well, go on.
"A. There was not any division of one figure into another.
"Q. You give a percentage.
"A. Approximately 20% of $93,386.17. That was used in arriving at the figure of $10,684.73, which was the cost, the estimated cost or approximate cost of those repossessed Cylinder Scales.
"Q. Now, how did you get your 20%? You got that percentage by dividing one figure into another. Now, what were the two figures? You surely know that. Well, if you can't tell us——
"A. I can't at this moment tell you.
"Q. You can't. How did you get the 30% for Fans? What figure did you divide into another figure? Tell us both the figures.
"A. I took 30% of the sales value.
"Q. How did you get the 30%?
"A. It was an approximation that was arrived at when the adjustment of factory costs of all sales was made.
"Q. Well, you arrived at it by figuring. Now then, what figure did you divide in some other figure?
"A. I cannot say at this moment.
"Q. Well, at any rate you took approximately 20% of $93,386.17?
"A. Yes, sir.
"Q. You took approximately 30% of $59,168.45?
"A. Yes, sir.
"Q. The first figure I have read to you is put on your
529 account on page 1 of Exhibit 21 as the gross sales value of the repossessed scales, Cylinders?
"A. Yes, sir.
"Q. The second figure I read to you is the same thing for fans?
"A. Yes, sir.
"Q. What additions did you make to the figures obtained by percentages, what were your additions?
"A. The inventory of Rebuilt and 2nd Hand and Loaners Scales at January 1st——
"Q. No, you have misunderstood the question. You got two figures, one for cylinder cost and one for fan cost, turned over to the 2nd Hand Department. You have already answered that you added to the sum of those two figures items of purchases made by the branches on these repossessed scales or purchased scales. What were those items of purchases, can you tell us?
"A. Yes, I can tell you.
"Q. How much?
"A. There was $557.50 altogether.

"Q. What was that for?

"A. That was for Loaners that were charged in error to other accounts and purchases made of scales made by the branches.

"Q. Anything else?

"A. That was all.

"Q. Now, to those two percentage figures you added $557.50 and that made your figure $36,435.27?

"A. No, sir.

"Q. What did it make?

"A. That $557.50 is not included in the $36,435.27.

"Q. Now, what is included in the $36,435.27, anything more than those two percentages?

"A. Just approximately 30% of $59,168.45 which is the gross sales value or the sales value of repossessed scales, and 20% of $93,386.17.

"Q. Yes, the $36,435.27 is merely the sum of those two figures?

"A. Yes, sir, those two approximate figures.

"Q. And that is the amount you credited to new scales?

"A. To the New Scale Stock Account.

"Q. Well, it went to the new scale business?

"A. Indirectly it did, yes.

530 "Q. That's where it landed in the end?

"A. In the end indirectly I said it did.

"Q. Yes. Now, you turned over to the 2nd Hand Scale account the scales represented by the item of Cylinder Charge Backs $93,386.17, didn't you?

"A. Yes, the cost of those scales, the factory cost.

"Q. Well, you turned over the scales?

"A. Yes.

"Q. Yes.

"A. I charged in that account the factory cost of those scales?

"Q. Well, we are talking about what you did by your bookkeeping in the way of turning over scales. You have already answered you turned over those 665 scales which figure here under the head of a total of $93,386.17 as a deduction from gross sales of Cylinders?

"A. Yes.

"Q. And you also turned over the 810 repossesed Fans which figure here under the amount of $59,168.45, a deduction from gross Fan scales?

"A. Yes, the costs of those were carried over.

"Q. Now, then, you also turned over to the 2nd Hand Department 315 scales, figuring here as allowed for at the figure $23,631.03 Toledos, 2nd Hand?

"A. Yes, those scales were turned over to that department, that number of scales."

"Q. They were turned over from the cylinder business?

"A. Yes.

"Q. Also there was turned over from the cylinder business 2,829 scales, being second hand scales of other makes taken in exchange and allowed for at the figure of $84,793.27?

"A. That number of scales was taken over.

"Q. Now, from the fan scale acquisition by means of the Toledo scales taken in there were 120 scales at $3,571.44 allowed for?

"A. That number of scales was taken into the second-hand department.

"Q. And those scales were allowed for, $3,571.44?

"A. The allowances made on those scales at the time a new sale was consummated was the figures stated.

"Q. And 1108 scales of other makes turned over from the fan scale business were allowed for at $15,580.18?

531 "A. That number of scales, of the scales were turned over to the second-hand department which represented all scales at the allowance value which you state there on new fan sales made previously.

"Q. Now, those scales that were turned over represent deductions from gross cylinder scales of how much? It is the sum of $93,386.17 and $23,631.03 and $84,793.27 for cylinders; for fans $59,168.45, $3,571.44 and $15,580.18. The total deductions from cylinder sales represented by those items is how much?

"A. $201,810.47 represents the total of those three items mentioned as regards cylinders.

"Q. What's the fans?

"A. The total of the three figures under the fan business is $78,-320.07.

"Q. What's the total of the two put together?

"A. $280,130.54.

"Q. Now, those scales turned over to the second-hand department represent deductions from the gross sales of cylinders and fans of $280,130.54, do they?

"A. They do in the way you have calculated them.

"Q. Yes. Now, the second-hand scales alone turned over to the second-hand department represent allowances in fans of how much?

"A. The allowances made for the old scales taken in trade on new fan scales sold was $19,151.62.

"Q. Now, give it to me for the cylinders, that same thing.

"A. The allowances made for the old and second-hand, used scales taken in trade for the sale of new cylinder scales, amounted to $108,424.30.

"Q. What is the total of the two for cylinders and fans?

"A. $127,575.92.

"Q. Now, you get this second-hand scale cost, the gross sales of cylinders and fans, the sum of $127,575.92?

"A. It didn't cost that. That much was allowed——

"Q. That much was allowed and deducted from the gross sales?

"A. I was going to finish my answer, if you please, I say that amount was allowed by the Scale Company for old scales taken in exchange, on new cylinder scales sold.

532 "Q. And that total represents what was deducted from the gross sales on account of the second — scales?

"A. It is deductible from the gross sales of the new scale business."

"The allowances were treated as a deduction from the gross sales and no cost assigned to the second-hand business for the reason that

the amounts allowed on those scales are not made on a basis of their intrinsic values, but the taking of the old scale is merely an excuse for making an allowance." In the case of new scales being sold the company in one instance where they sold a scale, say at $200, made an allowance of $50 whereas on the very same scale taken in trade on another new scale, say, sold for $75 the allowance would only be $25 so that the intrinsic value of those scales is not determined by the amount of allowances made. That allowance is simply an excuse for a cut in the price of a new scale.

Q. But were these 315 Toledos, these 2,629 scales of other makes, these 120 scales Toledo and 1,108 scales of other makes worth anything?

A. Yes, they were.

Q. Where have you given a credit to fans and cylinders for that value whatever it was?

A. The value——

Q. Where? Point to the place.

A. It comes through the 2nd Hand Scale business. The result of trading or selling or disposing.

Q. Yes. You take what you sell them for.

A. Would you let me answer you?

Q. But where do you charge 2nd Hand business with any value of those 2nd Hand scales and credit that same amount to the revenues of cylinders and fans, that's the question.

Mr. Meads: He started to tell you.

Mr. Zane: No, he did not. He said they apportioned the money they got out of it.

Mr. Meads: And gave the 2nd Hand business credit for all the money.

Mr. Zane: Gave the 2nd Hand business credit.

The Master: Let's take the witness's answer.

The Witness: I tried to answer when he interrupted me. I was going to give him a full anwser.

Mr. Zane:

Q. All right, answer.

The Witness (to the reporter): Go back and read that part
533 there.

The Master: Maybe you had better make your answer altogether.

The Witness: I tried to answer it and then he interrupted me.

The Master: Well, start over again.

A. Since no intrinsic value——

Mr. Zane: Now, your Honor, I object to that as not responsive. I have asked him where.

Q. Point it out in figures.

A. All right, I will point to you on page 1 of Defendant's Exhibit 21.

Q. Page 1 of Defendant's Exhibit 21.

Mr. Meads: Go ahead and finish your answer.

Mr. Zane:

Q. What figure?

Mr. Meads: I object to the continual interruption of the witness in the middle of his answer.

Mr. Zane: I am asking for a particular figure.

The Master: If you can give it in an exact figure, give it.

A. He was asking me where it was and I was pointing out to him page 1 of Defendant's Exhibit 21. In the revenue column of 2nd Hand business appears the gross sales figure of $111,651.34 which represents what they realized from the sales of all the 2nd Hand scales which they had taken in, those which they could sell. Many of them were scrapped and never had any value it would be safe to say as I am told by the——

The Master: Never mind.

Mr. Zane:

Q. What I asked you was where in the costs and expenses of the 2nd Hand business you had charged that department with the costs of the 2nd Hand scales and credited that same cost to the revenues of cylinders and fans. Is there any such place?

A. Why, there is not any such thing for the reason that the allowance——

Q. That's all.

Mr. Zane: We object to the rest of it.

"We have placed into the stock account as the value of second-hand scales at November 1, 1911, $23,885.34, this amount being taken from page 30 of the Company's ledger entitled 'Scales Inventory.' The items that go to make up this total are, November
534 23rd, U. S. Comp. exchanges, $20,068.68, and November 23rd, Factory. Comp. exchanges, $3,816.66. There was a valuation at that time for Canadian Scales, but it was not included in this inventory. I don't recall that I looked at the journal entry or the voucher. The entries covering this inventory were placed on the books on November 23, 1911. I dated it on Exhibit 47 of Plaintiff as of November 1st, because I was informed that that was the value of second-hand scales, or value assigned by the Co. to second-hand scales on hand November 1st, the entry not being taken up on the books until November 23rd. This amount was credited on the ledger in the account of Undivided Profits. The Surplus Account is on page 65 and that account does not show the amount. It is in the Undivided Profits account, which is another name of surplus. It is contained in an item on the credit side under date of November 28th, of $25,867.34. It was not taken out of the Undivided Profits account. I did not get from that account into some other account. I find an account on page 71, entitled, 'Reserve for losses on agents' accounts.' There is an amount of $25,867.34 credited to that account, but they do not relate to each other. I was told they did not

by an officer of the Company—by Mr. Zolg. He said they had no relation, that they were not intended to relate to each other.

"Q. Mr. Bowman, have you now satisfied yourself in regard to the entries on the general ledger in the Scale Inventory Account and the Undivided Profits Account as to whether or not they refer to the same thing or different things?

"A. The figures appearing in the Undivided Profits and the Inventories are the same.

"Q. Are you correct in saying that, that the figures are the same?

"A. Well, let's see. The Undivided Profits in the Scale Inventory Account which you are looking at on page 30 of the Company's ledger, the items of $20,068.68 and $3,816.60, are part of the credit which appears in the Undivided Profits Account, page 73 of the ledger.

"Q. Where do you get the rest of the amount to make those two figures come up to $25,867.34?

535 "A. That comes from the journal voucher I believe.

"Q. You know what it is, don't you?

"A. It is the Second-hand Scales Inventory of the same date which relates to the Canadian business.

"Q. Yes, but they are Second-hand Scales at this factory here?

"A. I think not.

"Q. Do you think they were in Canada?

"A. I think they were. They were either in Canada or else in the field in Canadian territory, I won't be certain about that.

"Q. Now, can you give me the exact amount of that Canadian inventory for Second-hand Competitors' Scales?

"A. It would be the difference——

"Q. Have not you got it on a Journal entry here?

"A. Yes, it is on a journal voucher.

"Q. Let us see that voucher.

"The Witness: Mr. Zolg, will you fiurnish that voucher please.

(Mr. Zolg produces document in binder which is handed to Mr. Zane.)

"Q. Now, the voucher which you refer to reads as follows:

"Toledo Computing Scale Co.

Original Entry and Transfer Voucher.

To G. J.: Date, Nov. 23, 1911.

Entry to place the Competitive Exchange Scales Inventory on our books. Per W. M. RANDOLPH.

Entry:	Dr.	Cr.
U. S. Exchange Scale Inventory.....	$20,068.68	
Canadian Exchange Scale Inventory....	1,982.00	
Factory Exchange Scale Inventory.....	3,816.66	
To Undivided Profits.....		$25,867.34

Date, November 29, 1911.'

"Now, that voucher convinces you that the entry in the Undivided Profits account on page 73 of the general ledger, which is as follows:

"1911, Nov. 28. Exch. Comp. Scales.....J. $25,867.34"

536 contains the two items on the account on the general ledger named Scale Inventory, viz., the entries

"Nov. 23, U. S. Comp. Exchanges.....J. $20,068.68
"Nov. 23, Factory Comp. Exchanges.....J. 3,816.66"

does it not?

A. Yes, sir.

Q. Now, the entries on the Scale Inventory Account that I have referred to are on the debit side of that account?

A. Yes.

Q. The entry I have referred to on the Undivided Profits Account is on the credit side of that account?

A. Yes.

Q. Do you see an entry on the debit side of the Undivided Profits Account which reads as follows:

"Nov. 23. Res. for Losses Agts. a/cs.....J. $25,867.34?"

A. Yes.

Q. It that the same item on the credit side of the Undivided Profits Account as the item which I read from the debit side of the Undivided Profits Account?

A. The figures are the same.

Q. Don't you know from the entry that they are the same?

Mr. Meads: I object, your Honor. It necessarily can't be the same item. I object to the form of the question.

The Master: What do you mean by saying the figures are the same?

The Witness: Well, the figure on the debit side corresponds with the figure on the credit side of the account of Undivided Profits.

Mr. Meads: In other words, if the Master please, the total sums up or aggregates the amount of this item.

Mr. Zane: No, there is no total. "The total of this"—look at the account.

Q. Don't you know that they are the same?

Mr. Meads: He has already answered the figures are the same.

Mr. Zane: I am asking him if he does not know from the book that that is the same item.

A. Mr. Zane, let me explain. From an accountant's point of view the physical accounts, that is to say, the inventory figure, a credit to which appears on this side (indicating) of Un-
537 divided Profits Account, page 73, which is $25,867.34, you see, and the debit to the same account of the same figure which was transferred to reserve for agents' losses are not related to

each other. One is an asset of inventories and the other is a reserve or rather relates to the asset of agents' balances, and that's what I mean by not having relation to each other.

Q. Don't you know that the entry on the debit side of the account "Nov. 23, Reserve for Losses Agents' Accounts $25,867.34" is for the purpose of taking that amount which was put on the credit side of the Undivided Profits Account and transferring it to the Reserve for Losses of Agents' Accounts?

A. It was to apply——

Q. Don't you know that?

A. I am answering. It was applied to offset the possible losses of Agents' Balances and was carried to that account called Reserve for Agents' Losses.

Q. Then your answer this morning that the entry in the Reserve for Losses of Agents and the entry in the Undivided Profits Account had no relation was not true, was it?

A. When I said that I did not have reference to the question that you ask now but to the physical fact of the account. One is an asset which relates to the inventory of scales and the other is an asset which relates to Agents' Balances and that's what I meant when I said they had no relation to one another.

Q. What did you mean when you said that Mr. Zolg told you they had no relation to each other?

A. Well, I say that Mr. Zolg told me that they had no relation to one another. I said, "Why did you do that, Mr. Zolg, if they were really correlated, why didn't you simply transfer it or charge it to the inventory account and carry it as a credit to Reserve for Losses direct?" And he told me that he had carried it under Undivided Profits Account so that it would show up and relate to both kinds of accounts.

Q. Then Mr. Zolg didn't tell you that the entries were not related, but he told you that they were related didn't he?

Mr. Meads: I object.

The Master: Objection overruled.

Mr. Zane:

Q. Zolg told you they were related, didn't he?

538 A. He explained it, that although they had credited the amount of that inventory which they were taking up on the books and transferred a similar figure to Reserve for Losses, did not indicate that the purposely picked up that amount of inventory to offset those losses because the losses may have been a great deal more or a great deal less, but they chose that place to finally put the inventory figures, or rather, that amount that they had taken up in Reserve for Agents' Losses.

Q. Now, on the account on page 71 of the general ledger, Reserve for Losses on Agents' Accounts, on the credit side of that account there is this entry which I read: "Nov. 28, From Undivided Profits J. $25,867.34." That refers back to the amount taken out of the Undivided Profits Account, does it not?

A. Yes, sir.

Q. And is here credited to the account called Reserve for Losses on Agents' Accounts?
A. Yes, sir.
Q. Have you got the journal entry?
A. Yes, sir. I think it is the next one here.
Q. That's the journal that you find?
A. Well, this is the journal voucher.
Q. Yes, the voucher.
A. Yes.
Q. And from this voucher an entry is made on the journal?
A Yes.
Q. This voucher reads:

"Toledo Computing Scale Co.

Original Entry and Transfer Voucher.

Dated, Nov. 23, 1911.

To G. J.:

Entry to re-open account for Reserve for Losses on Agents' Accts. This transfer represents the Comp. Exchange Scale Inventory recently placed on our books.

Per W. M. RANDOLPH.

Entry:	Dr.	Cr.
Undivided Profits	$25,867.34	
To Reserve for Losses Agents' Accts.....		$25,867.34

Date, Nov. 29, 1911."

539 Now, when you saw that voucher that told you the truth about it, didn't it?
A. That voucher, Mr. Zane, I examined that voucher and discussed it with Mr. Zolg and I asked him what the significance was of that.
Q. I am not asking you for that. When you saw that voucher you knew, didn't you?
A. That related to it only in figures, but the physical relation of the Reserve, the Agents' Balances to the inventory was not taken into consideration.
Q. What do you mean by talking about the physical relation of the Reserve? Is the Reserve a physical thing?
A. Take, for instance, the inventory of merchandise is one thing.
Q. One physical thing?
A. The Agents' Balances are another physical thing. Now then, the fact that they have some asset, which they had never previously taken up on their book, taken up on their book and credited to Undivided Profits and by a corresponding entry an equal amount is taken out of Undivided Profits and credited to a reserve does not necessarily relate them. It means in effect that they are applying

some asset that they did not heretofore inventory on their books and using it to apply as a reserve for possible losses against another asset which they had on their book.

Q. When you answered me this morning you had before that time seen this voucher that I have read last to you and discussed it with Mr. Zolg?

A. Yes, some time ago.

Q. When you answered this morning that there was no relation between the matter on the Reserve for Losses on Agent's Accounts in the general ledger and the entry in the Undivided Profits Account, you had seen these words "This voucher represents the Comp. Exchange Scale Inventory recently placed on our books," you had seen those words, had you not?

A. Yes, but the wording I am told is incomplete: "This transfer represents the value of Comp. Exchange Scale Inventory recently placed on our books."

Q. Then you knew that it represented the same thing, didn't you, when you saw this voucher?

A. Not exactly the same thing, Mr. Zane. It was simply an asset that they took up on their books at that date that they had
540 never previously used and applied the same figure, and equal amount in the reserve to apply against losses that they might sustain on agents' balances.

Q. What happened was that they found a new asset, they inventoried that asset, they entered that in the inventory account, they then transferred it as an asset into the Undivided Profits Account; then having it as an asset in the Undivided Profits Account, they transferred that to the Reserve for Losses on Agents' Accounts so as to have a reserve there, a credit to credit losses on agents' accounts against. Now, that's what they did, is it not?

A. No, I think you have it wrong there in come particulars. Just read the question over.

Mr. Meads: No, you have answered. Let him put another one.

Mr. Zane: I don't want to put another. He has answered that and said no.

The Witness: I said you were wrong in some particulars.

Mr. Zane:

Q. Mr. Bowman, have you the inventory which you said was taken on November 1st for these amounts?

A. It is my recollection it was as of November 1st. There are documents of that inventory here.

Mr. Zane: Well, where are they, Mr. Zolg?

Mr. Meads: They are here, are they not, Mr. Zolg?

Mr. Zolg: They are in the book.

Mr. Zane: Mr. Zolg, will you find them if they are in the book?

Mr. Zolg: I think the inventory of those Exchange Scales was simply taken from the consignment record and added to the machine list as far as I can remember.

Mr. Zane: Then Mr. Bowman never saw such a paper, did he?

I am asking for the paper, Mr. Zolg, that Mr. Bowman swears that he saw.

Mr. Zolg: This is it. (Producing document.)

Mr. Zane: Have you found the paper?

Mr. Meads: You might ask Mr. Bowman. I don't know what Mr. Bowman saw.

Mr. Zane: Well, Zolg talked it all over with him.

Q. Now, Mr. Bowman, is this the paper that you saw?

A. I think it is, yes, sir.

541 Q. And you saw this memorandum before it?

A. Yes, sir.

"Q. This paper reads as follows:

Mr. W. M. Randolph: "Nov. 21, 1911.

The following is a list of Exchange Scales now in stock in this department:

Anderson	2
Angldile	9
Elkhart	1
Standard	8
Stimpson	78
Dayton Beam	42
Dayton #14	4
Dayton #38	1
Dayton #39	2
Dayton #40	3
Dayton #56	1
Dayton #61	211
Dayton #63	54
Dayton #64	1
Dayton #70	3
Dayton #75	3
Dayton #88	2
Dayton #95	11
Dayton #102	1
Dayton #103	1
Dayton #110	3
Dayton #140	4
Dayton #141	1
Dayton #142	9
Dayton #144	1
Dayton #166	1
Dayton #170	1
Total	458

C. A. JOHNSON.
C. J. M.

458 (a) $25.00 each	$11,450.
1/3 =	3,816.66

Recapitulation.

U. S. Exch. Comp. Scales on Cons. (*a*) 1/3.....	$20,068.68
Can. Exch. Comp. Scales on Cons. (*a*) 1/3.....	1,982.00
Factory Exch. Comp. Scales on Cons.....	3,816.66
	$25,867.34"

542 The memorandum attached reads:

"Mr. Randolph:

Make entry charing U. S. Ex. Scale Inventory 1/3 of $60,206.03 and credit Canadian Ex. Scale Inventory 1/3 of $5,946.00 & credit Undivided Profits. Then credit Reserve for Losses on Agents and charge Undivided Profits.

Entry to be made in November & Against same to be charged present agents' deficits.

W. A. ZOLG."

(Endorsed:) 'Entry made 11/23/11. W. M. R.'

Now, Mr. Bowman, since we have settled the identity of that item you say that that was an inventory so far as it purported to be an inventory of November 23rd, don't you?

"A. Yes, sir, of second-hand scales.

"Q. Well, whatever it was for.

"A. Yes.

"Q. That is the time?

"A. Yes.

"Q. You entered that inventory so far as the U. S. Consignment item was concerned and the factory item was concerned in your second-hand Stock Account as $23,885.34?

"A. Yes, sir.

"Q. You made no credit for that amount to either fans or cylinders or both?

"A. No, sir.

"Q. Of course, there was an inventory taken at the beginning of the year, as you know, from the Scale Inventory Account?

"A. Yes, sir.

"Q. And that was a scale inventory which had an item in it for rebuilt and second-hand scales?

"A. There was an item of rebuilt and second-hand scales in the inventory at the beginning.

"Q. Yes. Now, there was an inventory of course taken at the end of the year?

"A. Yes.

"Q. To start out the next year on?

"A. Yes, sir.

"Q. And that inventory of course would include all the second-hand scales then owned?

543 "A. It should have included them.

"Q. Well, in the usual and natural course of business it should?

"A. Yes.

"Q. Don't you see that by entering the amount of that inventory taken in the middle of the year in the Stock Account if the balance in the second-hand scales is inventoried at the end of the year also, you have simply loaded us with that twice over?

"A. No, sir, on the contrary that figure which you refer to was an inventory of scales which had never previously been inventoried, and had it been properly charged against the current year's business, it would not have been credited to Undivided Profits.

"Q. But you said those were scales that had accumulated during the year 1911?

"A. No, sir.

"Q. Do you mean to say that you didn't say that yesterday?

"A. I did not say they had accumulated within the year. I said they had accumulated in the past and had never been previously inventoried.

"Q. Do you mean to say now that you did not say—I want a direct answer to this question—you did not say yesterday that those scales had accumulated during the year 1911?

"A. I do not recall of having given such an answer.

"Q. Will you say you didn't?

"A. I can't recall that I did, and if I did, I was in error and should have told you that it was an accumulation of the past not previously inventoried.

"Q. Who told you you were in error, has anybody?

"A. Why, it is a theory and a practice——

"Q. Has anybody told you you were in error?

"A. I can decide that for myself.

"Q. Has anybody told you you were in error?

"Mr. Meads: I object because he has not said anybody told him.

"Mr. Zane: I am asking him has anybody told him.

"A. Nobody has told me.

"Q. Have you discussed that matter with anybody since yesterday?

"A. Not the subject of charging that into this account, no.

544 "Q. Have you discussed the matter of second-hand inventory on November 23rd with anybody since yesterday?

"A. Except to inquire if these documents were here.

"Q. Have you discussed that matter with anybody? Answer that yes or no.

"A. I don't recall having discussed that.

"Q. Have not you discussed that with Mr. Seatree?

"A. I may have made some reference to it, yes.

"Q. Have you talked it over with him?

"A. Not at any great length.

"Q. Have you talked it over with Mr. Zolg?

"A. I don't recall that I have had any discussion with Mr. Zolg about it.

"Q. Have you talked with him at all about it?

"A. I may have made some reference to it in the course of asking for those documents.

The Master: Do the records show when they did accumulate, can you learn that from the books or do you get that information from some other source?

A. During the examination that particular item came up and I was informed by the officials of the company that it had never been the practice to inventory the accumulation of 2nd hand scales.

The Master: What I want to get at is whether or not from the books and records themselves you could tell when those scales accumulated.

A. No, you could not.

The Master: Whether in 1911 or in previous years.

A. You could not. You could only infer from the manner in which the entry which related to them was handled. For instance, it went into Undivided Profits, to the credit of it, instead of going into current profits.

Q. Conceding their account is correct, don't you see you have inventoried it at January 1st, 1911?

A. Yes, but, Mr. Zane, this inventory——

Q. Answer my question. Have you got in that account of yours inventories of 2nd hand scales January 1st, 1911?

A. There is an inventory.

Q. Yes.

A. But it is not a complete inventory of all the 2nd hand scales.

Q. Do you undertake to swear to that?

545 A. I am told that.

Mr. Zane: Yes. We move to strike it out.

Mr. Meads: You asked him.

The Master: Of course, what some officer of the company said to him is not competent because that is hearsay unless it be cases, and some cases have arisen in this examination where the witness was asked where he got his information and he stated where he got it, but of course we will agree that what some officer of the company said to the witness is not competent evidence, that it is hearsay.

Mr. Zane: That's the reason I move to strike out what he said when I asked him if he had an inventory of 2nd Hand stock in his account as of January 1st, 1911.

The Master: Motion sustained.

Mr. Zane: If, Mr. Bowman, in the creation of your 2nd Hand Department as an attempted separate department you have transferred as charges against 2nd Hand scales all the items of deductions from gross cylinder and fan sales for scales repossessed and all of the items for Toledo scales and scales of other makes taken in exchange at the figures they are in your account, and had credited the cylinder account and the fan account with those amounts respectively and on that basis had ascertained the loss in the 2nd Hand Depart-

ment at the end of the year, those amounts would have come back to the Cylinder account five-eighths charged against cylinders and three-eighths charged against fans on your unit basis, would they not?

A. I have not ascertained. I have not made the calculation.

Q. Can you answer the question.

The Master: Get the question, Mr. Bowman, clair in your mind.

(Question read.)

Mr. Zane:

Q. Can you answer that question?

Mr. Meads: If you can't, say so.

Mr. Zane: Your Honor, need we wait for him to look at papers on this?

The Master: Can you not answer that yes or no, Mr. Bowman?

A. No, I can't because I would have to verify those figures.

546 The Master: He has put a supposititious case to you.

Mr. Zane:

Q. Well, if you had done that, it would have shown a much greater profit on cylinder business, would it not?

A. I don't know that it would have unless I would calculate it according to the way you have carried those allowances into the 2nd Hand business.

Q. If in those cylinders you had carried $201,810.47 into the 2nd Hand Department as a charge and had credited that amount to cylinder business and then had transferred into the 2nd Hand Department $78,320.70 and credited that amount to the Fan Department and had ascertained on that basis the losses on 2nd Hand business at the end of the year, you can see, can you not, that if five-eight-s of the total, viz., $280,130.54, came back as a charge against cylinder business and three-eighths of the total came back as a charge against fan business, that the profit on the cylinder business would have been much greater than you represent it—you can see it?

Mr. Meads: I object to the question for two reasons, first, the witness has not attempted any such division, and second, the question assumes that if certain sales, which on the basis of the question could not have been made, had been made, the profits would have been greater. There is nothing in this record to warrant that question.

Mr. Zane: This is a mere matter of bookkeeping. This is the expert.

The Master: The question as I understand asks simply the witness's opinion as to a theory. Objection overruled.

A. It appears that it would show a greater profit in the cylinder business.

"The next item after 'Losses on sale of second-hand and re-possessed scales,' shown on page 2, exhibit 21, is 'Interest on Capital Investment,' at the rate of 5% per annum, divided between cylinder and fan scale business, on the basis of one-half, should be corrected to 'on the basis of gross sales.' Mr. Seatree is the author of the items which relate to the interest. I think I have the working sheet as to interest. It is here. Part of it is in my handwriting. The items
547 on which this interest calculation was made, and which is shown on the detail working paper, shows, preferred stock, $316,200, common stock, $300,000, bonds, $35,000, surplus, $250,000, floating debt, $445,000, undivided profits average balance, $25,000; the total $1,371,200, less patents represented by common stock or surplus, $250,000 deducted leaves a balance of $1,121,200. My next entry is 'say, 6%.' It is crossed out and 5% inserted in its place. Then I put below that the figures $67,272. That would be interest at 6 per cent. I erase that and put $56,000 opposite 5 per cent. Then I erased that and wrote, 'apportion on basis of scale output.' I did not mean anything by that. It was dictated by Mr. Seatree.

The sheet next has, 'Deduct investment in Canadian business as per T. B., $71,576.86.' The figure opposite 'Vulcanizer business as per T. B.' is $3,815.22. The total is $75,392.02, and to that is added $45,000, and then a total of $120,392.08, and below that is added 'say $121,200.' Then that total of $121,200 is deducted from my total of $1,121,200, leaving a balance of capital invested of $1,000,000 at 5 per cent per annum, $50,000. These were all called off to me by Mr. Seatree. I made no investigation.

The items of interest on bonds and on borrowed money or floating indebtedness was a separate charge against the profit and loss, the profits on the business as a whole. It was deducted on the reconcilation of the profits on page 2, defendant's exhibit 21.

On the basis of charging interest on invested capital at 5 per cent per annum, we show a loss on the cylinder business for the year 1911 of $24,316.63, and on the fan business, $26,984.09. I did not reconcile these figures with the fact that the company had paid dividends out of profits that year. From the ledger it appears now that each month dividends were paid on preferred stock. It was immaterial as to the dividends, so long as they were not charged against current profits. They were charged to an account entitled Undivided Profits, which is a part of the surplus, or as they call it, undivided profits, and if the dividends were paid out of undivided profits, I figured that they would be paid out of profits for preceding years, and in so far as the books show, they evidently had made profits in previous years.

"The items shown on page 2 of Exhibit 21, and covering net profits as per books before charging interest on capital invest-
548 ment or losses on agents' balances is $33,376.25, and is taken from page 78 of the general ledger as a balance of the Loss & Gain account, made by deducting the debits from the credits, that balance is Gain and Loss account. It is not shown there. The footings of the account had not been completed. I found on the

books no such balance as in Exhibit 8 of Plaintiff of, Total gain scale business $47,612.53, nor $43,765.73' after excluding vulcanizer business. My figure is $33,376.25, and that represents the final gain for the whole year on the entire business including Canadian business. On page 78 of the ledger the gain on Canadian business is in an account entitled Loss and Gain, and is shown on the credit side under date of December 30, 1911, $24,080.32. Entered on the ledger as a credit on that account is an item, Refinishing competitive scales, $75,653.56.

"On page 2, Defendant's Exhibit 22, the first item shown is gross sales reported by M. M. P. & Co., 5,329 scales, opposite which is shown the amount of those sales, $803,657.26. The first item covering adjustments increasing the gross sales was shown by voucher number 426, dated February, 1911, one number 346 cylinder scale treated by M. M. P. & Co. as a deduction from Exchange scales, $135. The entry on the combination Sales Journal was a credit to Exchange scales account, and cannot be identified, on the Exchange scales account, which is a summary of the items which appear in the combination journal. It is in the total on page 97 of the general ledger, a credit. In the M. M. P. & Co. account they carried the item in Exchange scales account. They followed the books, the account shown on the general ledger of the books. From the combination journal, postings were made to the ledger, and the journal had a column headed, 'Exchange scales,' to represent exchange scale allowances. If an allowance was made and an exchanged scale taken in, the entry would be to the debit of this account. The journal entered it the same way, and neither book shows an exchange scale taken. To get what it was and what it meant you have to go back to the voucher. This account is intended to represent the allowance made by the company on exchanged scales taken in on new fan and new cylinder scales, the entry for the exchanged scales showing on debit side of the account. This account as rendered on the
549 general ledger would not show any transactions of scales sold. To get this information you would have to refer to the combination journal and voucher. The ordinary transaction out of which a credit arises to that account would represent a credit for the most part for allowances made by agents in excess of the regular allowances made by the company.

"Because of the size of the credit here, one would infer it was too great credit for such a transaction, but if he were following the books as correct, he would carry it as a credit in return scale account. The entry on the journal is under the general head 'Sundries' subhead, 'Exchange scales,' in the credit column, February 15-26, W. J. Mercer and shortage, $926.50, which amount is put also under the debit column under the heading, 'General ledger.'

"On page 2 of the Exhibit 22, the first item covering one number 346 cylinder scale, treated by M. M. P. & Co. as deducted from exchange scales, $135, has been added to the total number of gross sales of cylinder scales as one cylinder scale. This entry represented the shortage of the scale on the part of an agent, the scale he could not produce. The amount, $135, is in the total of $926.50. By my

account I represented the transaction as the sale of one cylinder scale. The entry was in fact a charge by the Company against the agent for $135 of the shortage. On page 7 of the Defendant's Exhibit 22 is found the charge, for a cylinder scale $135, this is the balancing charge so far as the cylinder scale is concerned. This charge affects the second-hand scale account by increasing the debit of that account to that extent. That is an expense. It does not appear in the second-hand scale account on pages 1 and 2, Defendant's Exhibit 21. It does not appear in any total in that exhibit. It makes a difference of $135 by increasing the balance of exchange scale allowances, that account being divided between cylinder, fan and second-hand allowances and deducted from the sales. It makes no difference in the second-hand scales account.

"On page 2, Exhibit 22, the next item is for 6 scales that were substituted for 6 scales already sold, and they were all new scales, so far as I know. This entry on the books was made up of a number of items which appear in the debits to United States Sales
550 account, which are part of the charge back account. We have consolidated the debits to sales and the charge backs as the charge back account. In M. M. P. & Co.'s report they dispose of the matter in the same way as shown by the company's ledger.

"This entry covering the 6 scales is made upon a number of items. 6 scales were originally sold, and later 6 scales substituted in their place. I represent that in my account as a sale of 6 scales, a return of 6 scales, and a new sale of 6 scales. The 6 scales that were returned I have turned over to the second-hand department, and if these 6 scales are sold, that would be an additional sale of 6 scales.

"Q. All right. Now, you don't undertake to say that as a matter of law when six scales have been sold and a substitution of six scales is made therefor that that becomes a sale of twelve scales with a revocation of the sale as to six scales, do you?

"Mr. Meads: I object to that form of question. This witness has not attempted to do that as a matter of fact.

"Mr. Zane: I want to find out.

"The Master: The question is whether he does say that. Objection overruled. That can be answered yes or no.

"A. As a matter of law, no.

"Mr. Zane:

"Q. Now, what difference did this entry make here with the corresponding entry in regard to the second-hand Scale Account?

"A. The cost of the scales originally sold and returned were charged to the Second-hand Department.

"Q. Well, you treated those six scales returned as scales going into the Second-hand Department?

"A. Yes, sir.

"Q. If they were sold over again as new scales, your disposition of the transaction on your account would be a misrepresentation, would it not?

"Mr. Meads: I reiterate I object to that question. There is nothing here to show these scales were sold as new.

"The Master: He says if they were.

"Mr. Meads: Yes, but the hypothesis must be based on something in the record.

"The Master: Not necessarily. I assume it is not known
551 whether they were or were not, that is, they may have been sold as new scales and they have been put into the second-hand Department, and I don't suppose this witness knows about the disposition of the scales themselves.

"Mr. Zane: He has already said he does not know, but he knows of cases where they were.

"The Master: Objection overruled.

(Question read as follows: If they were sold over again as new scales, your disposition of the transaction on your account would be a misrepresentation, would it not?)

"A. Well, it would misrepresent those facts, yes.

"Mr. Zane:

"Q. Now, you have already stated that you know of cases where repossessed scales were sold over again as new scales. You know that, don't you?

"A. Yes, sir, in some instances I do.

"Q. In some instances you noticed it?

"A. Yes, sir.

"Q. Can you tell us the factory numbers of the six scales originally sold and the six scales substituted?

"A. I cannot as to factory numbers.

"I did not keep the factory numbers of the scales returned. It would have taken too long, and the records are not arranged so as to easily obtain that information. I saw all the M. M. & P. Co. working papers that they allowed me to see. All that I asked for. I do not recall that the factory numbers of scales sold and returned were contained in their papers. They may have been."

Q. Can you say from your knowledge of the books that on March 14, 1911, a cylinder scale, No. 85915, type No. 381, was repossessed from L. H. Harris, having been sold to him for $170 and on March 22, 1911, was sold to E. M. Knight for $170?

A. I cannot.

Q. Can you say from your knowledge of the books and records that on the 14th day of January, 1911, cylinder scale factory No. 85——

(To the reporter:) Read the last question please.

(Last question read.)

Mr. Zane: Strike out that question.

Mr. Meads: I object.

Mr. Zane: I have used a wrong date there.

552 The Master: If counsel insists, you will have to repeat the question to the witness.

Mr. Zane:

Q. Now, I will put this question to you, Mr. Bowman. Can you from your knowledge of the books and records that cylinder scale factory No. 85915, type No. 381, was sold on the 14th day of March, 1911, to L. H. Harris for $170 and having been repossessed was again sold on March 22, 1911, for $170 to E. M. Knight?

A. I cannot.

Q. Can you say from your knowledge of the books and records of the defendant whether a cylinder scale, factory No. 85541, type No. 381, was sold on the 14th day of January, 1911, to John F. Mascherini for $160 and having been repossessed was again sold on the 17th day of February, 1911, to A. Chiesa & Son for $160?

Mr. Meads: I object to that question. It is perfectly evident that counsel is reading from an instrument concerning which the witness has not testified, and attempting to examine him as to something that he had not even directly or indirectly referred to in his direct examination. He has not mentioned this transaction at all or any of them.

The Master: He has presented an account here with transactions bearing that same number.

Mr. Meads: No, your Honor. If counsel will tell you that any of those scales are these involved, I will withdraw my objection. He has just examined as to two times and now he has gone off on to something else.

The Master: He has a right to test the knowledge of the witness as to the books of the company. Objection overruled.

A. No.

Mr. Zane:

Q. Can you say from your knowledge of the books and papers whether a scale, cylinder, factory No. 85859, type No. 381, was sold on the 31st day of January, 1911, to the Pender Grocery Company for $160 and having been repossessed was on the 13th day of September, 1911, sold to Fred Noll for $160?

Mr. Meads: I object for the same reasons as stated in the other question.

The Master: Objection overruled.

A. I cannot.

Mr. Zane:

Q. Can you say from your knowledge of the books and papers whether or not cylinder scale, factory No. 85885, was on the
553 28th day of April, 1911, sold to Peter Shon for the sum of $175 and having been repossessed was sold on the 28th day of June, 1911, to the Carlin Manufacturing Company for $175?

Mr. Meads: I object for the same reasons stated.
The Master: Objection overruled.

A. I cannot.

Mr. Zane: I will put now a number of scales in the 85,000 together.

Q. This particular scale I want to draw your attention to, whether or not you can say from your knowledge or the books and papers that on the 10th day of March, 1911, cylinder scale, factory No. 85624, type No. 381, was sold to Torto Tomaso for the sum of $160 and on the 7th day of October, 1911, having been repossessed, was sold to J. D. Kroboth for the sum of $145?

Mr. Meads: I want to note an objection for the reasons above stated.
The Master: Objection overruled.

A. No, sir.

Mr. Zane:

Q. Can you say from your knowledge of the books and papers that cylinder scale factory No. 85945, was sold on the 14th day of January, 1911, to John J. Ost for the sum of $190 and on the 31st day of May, 1911, having been repossessed, was sold to Milton Kucera for the sum of $185?
A. No.
Q. Can you say from your knowledge of the books and papers of the defendant whether or not on the 21st day of January, 1911, cylinder scale, factory No. 85751, type No. 387, was sold to the American Fish Company for $175 and on the 24th day of October, 1911, having been repossessed, was sold to Naumann & Schill for the sum of $165?
A. No.
Q. Can you say from your knowledge of the books and papers of the defendant whether or not cylinder scale, factory No. 85742, type No. 387, was on the 21st day of January sold to the American Fish Company for $175, and, having been repossessed, was on the 13th day of September, 1911, sold to the American Fish Company for $175?
A. No.

554 Q. Can you say from your knowledge of the books and papers of the defendant whether or not on the 8th day of April, 1911, cylinder scale, factory No. 85858, type No. 381, was sold to J. Rizzo for the sum of $160.75 and, having been repossessed, was on the 29th day of September, 1911, sold to J. Rizzo for $160.75?
A. No.
Q. Do you know whether scales were repossessed and the type number changed and sold over again as new scales?
A. No.

Q. Do you know from your knowledge of the books and papers of the company that on the 31st day of January, 1911, cylinder scale factory No. 85366, type No. 385, was sold to the Pender Grocery Company for $140 and, having — repossessed, was on the 22nd day of March, 1911, as type No. 381 sold to C. H. Bernstable for $150?

A. No.

Q. Are you able to say from your knowledge of the books and papers whether on the 25th day of January, 1911, cylinder scale, factory No. 85520, type No. 383, was sold to M. M. Stevenson for $185 and on the 11th day of April, 1911 as type No. 381 sold to W. L. Klouse for $150?

A. No.

Q. Can you say from your knowledge of the books and papers of the defendant whether on the 21st day of February, 1911, cylinder scale, factory No. 85916, type No. 347, was sold to John Harris for $140 and, having been repossessed, was sold on the 12th day of September, 1911, to Edgar R. Reel for the sum of $170 as type No. 381?

A. No.

"Q. If you were not able to trace these repossessed scales by the factory number, how were you able to allocate commissions applicable to a repossessed scale?

"A. When a scale was repossessed the entry for commission was almost invariably taken up at the same time and entered in the voucher with regard to the repossessed scales and the account of commissions was dealt with accordingly.

"Q. And therefore you traced the commissions applicable to all repossessed scales?

"A. Yes, sir, as far as it was possible to trace them.

"Q. You are sure of that?

555 "A. Quite so.

"Q. On your direct examination as to what commissions was it that you made — the answer that you traced them for three months and average them on that basis for the remainder of the year?

"A. That had to do with the commissions on the forfeited installments.

"Q. Those were commissions on repossessed scales, were they not.

"A. They were commissions on forfeited installments.

"Q. Forfeited installments applied to repossessed scales, didn't it?

"A. Commissions on forfeited installments which applied to repossessed scales.

"Q. Yes. Now in regard to these two items on page 2 of Exhibit 22, Marwick, Mitchell & Company's account followed the transaction as entered on the cash journal?

"A. Which two items?

"Q. The first two.

"A. The $135 and $822.

"Q. Yes.

"A. No.

"Q. They didn't then attempt to change or reform the books?

"A. No, sir.

"Q. In making these changes on the books or changes of the entries of the transactions from the way in which they were entered on the books did you have any occasion to consult the counsel in the case?

"A. I do not recall that I did. I may have spoken to Mr. Frye at one time about some items of repossessions, but my discussion with him was more to get an idea of the kind of sales contracts that they had.

"Q. You didn't inquire of counsel in the case what would be the legal principle that would govern the entry of either of these transactions?

"A. No, sir.

"Q. You didn't even consult the counsel in the case to find out what would be the general legal principle involved in separating cylinder business from fan scale business and accounting for that in your accounting?

"A. No, sir."

"The third item on page 2 of the Exhibit 22 covers deduc-
556 tions from gross sales for second-hand and rebuilt cylinders scales included by M. M. P. & Co., in new cylinder scale sales, and treated by P. W. & Co. as second-hand scale sales. On the books of the company these were treated as United States sales scales, which is the way M. M. P. & company treated them. There were 39 of these scales in all. The account on the books, United States Sales Scales," was intended to be new scale sales. The item of $1,953, page 2 of Exhibit 22, represents 20 scales, and $2,057.99 represents 19 scales. Those figures are taken from M. M. P. Co.'s papers. I don't know whether the scales contained the infringing devices. When I deduct this $4,010.99 from the cylinder revenues, it is placed in the revenues of second hand scales account as shown on page 14, defendant's Exhibit 22, and is a part of the $11,584.99. I took the amount out of cylinder revenues, and returned five-eighths of it."

"The next item $49.25 entitled 'Accessories included in Cylinder Scale Sales by M. M. P. & Co., treated by P. W. & Co. as Miscellaneous sales' was entered on the combination journal and ledger account as United States Sales of new scales. If these were accessories that could only be used with cylinder scales they would belong to the cylinder scale sales if the probable cost of those sales was taken up correspondingly as a charge against the revenues.

"The amount of Gross Sales as reported by M. M. P. & Co. is the amount of United States scale sales account on the general ledger apportioned as to cylinder scale sales and is a part of the balance of United States Sales Account in the general ledger.

"The figures $803,657.26 showing the gross sales of 5,329 cylinder scales were taken from the papers of M. M. P. & Co. and were not obtained by me from an actual examination of the books. "The paper of M. M. P. & Co. were taken in arriving at that figure as the amount of gross sales of 5,329 cylinder scales."

"Then testimony as follows:

Q. Now, why is it in this account where Marwick, Mitchell & Company followed the books you do not say that that report is on the books as such and such a figure? Why do you substitute Marwick, Mitchell & Company for the books?

557 A. I refer you for my answer to Mr. Seatree.

Q. You don't know anything about that?

A. Well, Mr. Seatree is the author and designer of the statements and the manner of stating the accounts and the theories.

Q. Well, you have sworn to the propriety of this account. You have said you concurred in the account. Now, what made you concur in it?

A. By concurring in the account I mean to say that Mr. Seatree who is the senior member of our firm has laid down to me the principles and has worked out the theories and has laid out the accounts as they are to be stated and I have supplied him with the details. That's my concurrence as I intended it should be understood on this hearing.

Q. You have no independent judgment then in regard to the matter?

A. If I have, it is reserved.

Q. You have a judgment dictated by Seatree?

A. He is my superior and I take his dictation in matters of that kind as regards principles and theories and manners of stating accounts.

Q. And when you swore to the propriety of this account you didn't mean to swear that in your opinion and in your judgment everything that is stated in this account is correct as it is put in that account?

A. To the best of my knowledge and belief and as far as I have worked on this account, everything there is correct.

Q. And correctly entered under the proper heading?

A. I think so.

Q. Then you did think that in your judgment the words, "Marwick, Mitchell & Company" ought to be used instead of "the books"?

Mr. Meads: I object to that form of question. He has shown what he did. The statement on the gross sales "as reported by Marwick, Mitchell & Company" put down there under the dictation of a superior officer, how is it material to this case whether he who had no interest in the matter thought some other language might be a little better?

Mr. Zane: No, I want to show from these books in regard to these items in Marwick, Mitchell & Company's report only the dif-

558 ference in value between the substituted and returned scales is dealt with in chargebacks. He now admits that's the way the books stand. This other phrase "included by Marwick, Mitchell & Company in new scale sales"—he admits that's the way the books stand. Now, what I want to show by cross examination of this witness is a studied attempt to conceal the fact by substituting the words "Marwick, Mitchell & Company" instead of *the* "the books."

The fact that these books are the things that were accepted and followed by Marwick, Mitchell & Company. That's the point of this cross examination.

Mr. Meads: Why, the caption of the sheet on which counsel is examining this witness is a "Summary of differences in gross cylinder scale sales as reported by Marwick, Mitchell and Company, and Price, Waterhouse and Company respectively." First, to show whether there is a difference you have to show what Marwick, Mitchell & Company report and this witness has said he did that at the dictation of a superior officer. What difference does it make whether he could use some other language or not?

Mr. Zane: He says in his judgment this is a correct use of the language.

The Master: Objection sustained.

Mr. Zane: Exception.

Q. Now, did you have any occasion to consider whether or not as an accountant hired by the Toledo Scale Company in making your account you had the right to change items upon their books that had been upon their books for five years and used and acted upon by the Toledo Scale Company?

Mr. Meads: I object to that question, your Honor please.

The Master: Objection overruled.

Mr. Meads: Allow me. There is no evidence here that he has changed any items in the books. All the evidence here is that he has grouped these items as taken from Marwick, Mitchell's report and the books in other ways than grouped on the books, but he has not changed anything on the books.

Mr. Zane: He has taken them out of one account and
559 put them in another account and the net effect of that change is to reduce the revenues from cylinder scales.

The Master: You ask, however, in your question whether he changed items.

Mr. Zane: Whether he had occasion to consider the matter, whether he had any right to change accounts.

The Master: With that modification I will overrule the objection. That changes "items" to "accounts."

Mr. Zane: Yes.

The Master: You can answer it as modified.

A. There were no changes in accounts. These statements represent the views of correctly stating the accounts.

Mr. Zane: Your views of correctly stating the accounts?

A. The views of the firm that I represent of which the senior partner is the head.

Q. Therefore these figures do represent departures from the accounts as they are found on the books of the defendant?

Mr. Meads: I object unless he limits to what books, unless the witness has said they do represent the accounts as they appear on certain books of the company?

Mr. Zane: No, he does not. The books are their cash journal and their ledger.

Mr. Meads: The vouchers and the customers' journal are just as much the books of the company as those others and if a posting is made into the ledger, it is only one of the books involved in the transaction.

Mr. Zane: This is not a case of customers' journal.

Mr. Meads: You have not confined yourself to any particular book.

(Question read as follows: Therefore these figures do represent departures from the accounts as they are found in the books of the defendant?)

The Master: Objection overruled. You may answer it, Mr. Witness.

A. By reason of having examined the documents according to the books, they are.

"Mr. Zane:

"Q. Now, go to your account on page 3 of exhibit 22, "Summary of differences in Charge Backs and debits to Cylinder Scale Sales as reported by Marwick, Mitchell & Company and Price Water-
560 house & Company respectively", I am going to ask you one general question with regard to that account.

"Does the amount of the account $77,985.87 which you say is reported by Marwick, Mitchell & Company correctly represent the amount of that account as it appears on the general ledger?

"A. It represents the proportion of the accounts of charge backs and debits to sales assigned to cylinder scales by Marwick, Mitchell & Company.

"Q. On what principle do they assign charge backs and debits to cylinder scales in that account if you know?

"A. I do not.

"Q. So far as you know, that amount $77,985.87 represents the amounts of debits to cylinder scale sales and charge backs as they are found in the Charge Backs Account on the general ledger?

"Mr. Meads: I object. The witness has not testified to that. He said it was a pro-rata of certain amounts as made by Marwick, Mitchaell & Company.

"Mr. Zane: He has and he knows it is not a pro-rating.

"The Master: Objection overruled.

(Question read.)

"A. I believe they correctly state the proportion of those two accounts on the general ledger.

"Q. Now, where on the general ledger are found the debits to sales and charge backs, what is the name of the account or accounts?

"A. Debits to sales appears on the debit side of the account in the general ledger marked United States Sales (Scales) page 90.

The charge backs is a balance of an account on the company's general ledger entitled—— Wait a minute.

(To the reporter:) Read the question.

(Question read.)

"The Witness: Cut out the figures on that. It is Toledo Scales Charge Books in the company's general ledger, page 92.

"Q. In those two accounts then you find the debits to cylinder sales and charge books?

"A. You find the summaries with the postings from the cash journal.

561 "Q. And that is what those two accounts are intended to represent?

"A. They are.

"Q. Your next item is #346 Cylinder Scale repossessed not included in Marwick, Mitchell & Companys statements 1 scale, amount $125. Where does that item appear on the cash journal?

"A. You have my papers.

"Q. Well, you can't tell us from recollection?

"A. Why, no, there are thousands and hundreds of thousands of figures in here and I could not begin to recollect.

"Q. Well where have you made the balancing charge for that $125?

"A. It has been been credited to fan scales.

"Q. That $125 has been credited to fan scales?

"A. Yes, sir.

"Q. What does that show you as to the transaction as you understand it?

"A. What does what show me as to the transaction?

"Q. The fact that that $125 is credited to fan scales.

"A. From my recollection, looking at this document which I have here, page 3 of Defendant's Exhibit 22—I am testifying from my memory while you are using my papers——

"Q. Yes.

"A. —That that transaction represented a cylinder scale originally sold and subsequently returned where the customer took a fan scale and the amount on the scale account of fan sales was credited with the net amount whereas the entry in the ledger, or rather, in the combination cash journal, did not record the return of a cylinder scale and the sale of a fan scale. In other words, according to the cash journal, the Charge Backs Account of Cylinders received credit for an item it was not entitled to.

"Q. Now, the transaction then was this. A cylinder scale had been sold for $125?

"A. I don't remember the amount. I will have to refer to my working papers to give you the exact details. I will get the voucher if you wish.

"Q. Well, a cylinder scale had been sold. Then the company in order to dispose of a fan scale took the cylinder scale back and let the customer have a fan scale. That's it, was it not?

"A. Oh, well you don't correctly state it. I don't think it
562 was a question of the company wishing to dispose of a fan scale. The fan scale was probably the option of the customer. I don't know what the purpose was, but from recollection I think that is the transaction.

"Q. The company agreed to that of course or it would not have done it. Now then, did you have occasion to consider the proposition as to whether when the company has made a sale of a cylinder scale and takes that cylinder scale back and disposes in place of it of a fan scale, that the cylinder scale revenues are entitled to that amount, did you have occasion to consider that?

"Mr. Meads: I object to that form of question, your Honor.

"The Master: Objection overruled. The question is whether you had occasion to consider that question.

"A. I did.

"Mr. Zane:

"Q. Did you consider that in regard to the general proposition that the company was accounting here for all the revenues that it received from cylinder sales?

"A. I did.

"Q. Now, as a matter of fact, the company on the sale of the cylinder scale had the right to demand an amount, either this $125 or including the $125, didn't it?

"A. I don't know what their rights were.

"Q. Well, on the sale they had the right to demand the purchase price, you certainly know that, don't you?

"Mr. Meads: I object. This witness has not attempted to testify as to the terms of the sale. The sale might have been originally an option for either scale.

"Mr. Zane: I will put it to him this way.

"Q. The book of the Toledo Scale Company represented that transaction originally as a sale of a cylinder scale, didn't it?

"A. Yes, sir.

"Q. For a certain amount?

"A. Yes, sir.

"Q. Then when the cylinder scale was taken back and the fan scale substituted in place of it, the difference between the two transactions, whatever they were, was entered in some account by the Toledo Scale Company, was it not?

"A. Yes, sir.

"Q. Now, in what account was that amount entered?

"A. In U. S. Scales (Sales) Account in this instance.

"Q. Yes. So that the Toledo Scale Company treated the
563 matter in taking back the scale as that revenue being derived from the sale of a cylinder scale, didn't it?

"A. No, sir.

"Q. You take the amount and add it to the debits to sales?

"A. Yes, sir.
"Q. That was the total amount of the cylinder sales, was it?
"A. Yes, sir.
"Q. Had anything been paid on the cylinder scale?
"A. I do not know unless I examine the papers.
"Q. Well, if anything had been paid on the cylinder scale, it would not have made any difference as to your taking the whole amount and adding it as a debit to cylinder sales, would it?
"A. No, sir.
"Q. And therefore if something had been paid on that cylinder scale, you would have taken that something that had been paid and transferred it somewhere else, would you not?
"A. It depends upon the nature of that something that had been paid.
"Q. Well, if it were money, you would take that amount that had been paid on the cylinder scale and transfer it somewhere else?
"A. It would depend upon the nature of that payment.
"Q. Well, what did you do in this case?
"A. I don't recall without examination of those papers which you have.
"Q. All right.
"A. I can give you the theory of transferring this to debit of sales if you wish.
"Q. No. You have already given that in your direct examination. Don't you recall what you answered about that transaction in your direct examination?
"A. I don't recall it at this moment.
"Q. Well, we will pass that item for a moment to go to the next item. 'Amount by which 'Charge Backs' in respect of repossessed scales were understated by Marwick, Mitchell & Co.' This item which you have here, $15,517.70, does not appear as an amount chargeable as debits to sales or charge backs on the general ledger, does it?
"A. It is in a net balance charged to charge backs or debits to sales in that account in the general ledger.
564 "Q. It is in the general ledger?
"A. In the net balance.
"Q. Your statement here shows this, "This understatement of the 'Charge Backs' arises by reasons of the bookkeeping entries in respect to repossessed scales having been incompletely recorded by the Company. Instead of reversing the entire transactions and thus relieving the various accounts involved of the respective amounts credited or charged to them (for example, sales, allowances, commissions, etc.) and transferring the Forfeited Installments to a separate account, merely one simple entry was made relieving the customer's account of the unpaid balance which was thereupon charged as a composite entry to 'Charge Backs' account." What do you call Charge Backs Account, that Toledo Scale Charge Backs Account in the general ledger?
"A. Well, Charge Backs refers to, as we used it in this statement, relates to debits to sales and Charge Backs Account.

"Q. When you say Charge Backs Account you are referring to both of these accounts?

"A. Yes, sir, that is, referring to the debits in the one account and the debit balance of the other account.

"Q. That statement shows you, does it not, that Marwick, Mitchell & Company followed the entry upon the general ledger of these various matters?

"A. Yes, sir.

"Q. So that you would say that this amount of $15,517.70 is the amount by which Charge Backs in respect of repossessed scales were understated by the general ledger of the Toledo Scale Company, that's true, is it not?

"A. The balance of that account was understated on the general ledger.

"Q. On the general ledger.

"A. Yes, but the vouchers that were recorded in the cash journal did not do so.

"Q. Yes.

"A. They gave all the details with reference to those transactions.

"Q. But it entered an entry representing a difference, that's what the cash journal did, made an actual figure on the cash journal representing a difference, didn't it?

"A. Yes, as all cash journals do.

"Q. Then that entry on the cash journal was carried into the general ledger in the same figures, was it not?

565 "A. Yes.

"Q. You don't mean to say that the general ledger differs in figures from the cash journal, do you?

"A. Why, no.

"Q. No. Impossible.

"A. Obviously it could not be correct.

"Q. So what you have done in this case of repossessed scales is, you treated the original sale as never having been made and everything that had happened in regard to the original sale is treated as not having taken place so far as new sales are concerned except this, you enter the total amount of those repossesses scales for which you repossessed scales were originally sold, then you enter upon the other side that same total amount so that you have on one side of the United States Scales (Sales) the total amount of those sales and on the other side the total amount of those sales?

"A. Yes, sir.

"Q. You made that balance?

"A. Yes.

"Q. Then, having done that, you treated everything, every revenue that was realized from that sale, as a revenue for 2nd Hand scales?

"A. Not as a revenue, as a reduction of the expenses in putting those scales back in salable condition. That is the theory of that transaction.

"Q. As a reduction of the expenses for the 2nd Hand Scales?

"A. Yes, sir.

"Q. If it is a reduction of the expenses for 2nd Hand scales, it is a revenue, is it not?

"A. Well, as I understand the operation of the company——

"Q. Answer that yes or no.

(Answer given which was ordered by the Master to be stricken physically from the record upon motion of Mr. Zane.)

(Question read to witness.)

"A. Yes.

"Mr. Zane:

"Q. If it is a reduction of expenses of the 2nd Hand Department, then it is a revenue of the 2nd Hand Department, is it not?

"A. It is not a revenue in the sense——

"Q. Is not it something that goes into these receipts of the 2nd Hand Department to balance expenses?

"A. It is an offset.

566 "Q. Well, if it is an offset to expenses, then it helps to balance expenses, does it not?

"A. Helps to keep balances.

"Q. Yes, balances them off?

"A. To offset them, reduce them.

"Q. So that you have done then is to take all the amounts realized from repossessed scales and take that amount of the cylinder sales and put that amount in the 2nd Hand Scales Account as an offset to expenses, that's what you have done, is it not?

"A. Yes, sir.

"Q. Now, whatever is put into that 2nd Hand Account is returned in some way to cylinders on the basis of five-eighths of the amount to cylinders and three-eighths to fans?

"A. Yes, sir.

"Q. Now, then this $15,517.70 is made up of various amounts and one of these amounts is $12,843.20, Forfeited Installments on cylinder scales received prior to repossession, forfeited, is that what you mean?

"A. Yes, sir.

"Q. What do you mean by "repossession forfeited"?

"A. Well, there should be a dash between them. Installments received prior to repossession—forfeited.

"Q. You mean installments forfeited received prior to repossession?

"A. Yes.

"Q. You see from your own statement there that that was an amount of something derived from a cylinder scale that had been received by the company prior to reposession, don't you?

"A. Yes, sir.

"Q. Now, did you have occasion in connection with that entry to consider the proposition that the company here, the Toledo Scale Company, had to account for everything it received from cylinder scales by way of a receipt from the sale of those scales.

"A. Yes, sir.

"Q. And you thought you were doing it properly by giving five-eighths of the receipts of those sales to the cylinder scale business?

"A. Five-eighths of all the installments received of all scales, that is to say, five-eighths of all forfeited installments received on all scales.

567 "Q. Now, do you know what the forfeited installments were on fan scales?

"A. Yes, sir.

"Q. Have you got the amount?

"A. You have my working papers but you can refer to Defendant's Exhibit 22, page 10, where you will find that the forfeited installments on fan scales amounted to $10,966.14.

"Q. That's on page 14, not page 10.

"A. Well, page 14, I meant to say.

"Q. Of exhibit 22?

"A. Yes, sir.

"Q. Now, in that total on page 3 of exhibit 22 is this item, $1,584.50, Exchange Scale Allowances. Where did you find on the general ledger that amount of $1,584.50?

"A. It is included in the account of charge backs and debits to sales on the general ledger.

"Q. By this entry you are transferring $1,584.50 to what?

"A. To the credit of Exchange Scale Allowances.

"Q. You are making Exchange Scale Allowances greater?

"A. Less.

"Q. Less?

"A. Yes, sir.

"Q. Your next item, $97.00, is that making Toledo Scale Allowances less or greater?

"A. Less.

"Q. And the same with the item Special Allowances?

"A. Yes, sir.

"Q. By adding it here to debits and charge backs you are decreasing the revenues from cylinder scales, are you not?

"A. Yes, sir, the next revenues from cylinder scales.

"Q. Now, the next time, Balance of Commission cancelled?

"A. That relates to allowances, various allowances on Exchange Scales which were made by the agents which originally when the sale was made were charged to their personal account.

"Q. Charged to the agent?

"A. Yes.

"Q. Because they had allowed too much for Exchange Scales?

"A. Yes, sir, but the commission account which had been charged with the gross commission had not been relieved by these allowances, so that when the sale fell through these excess allowances

568 which had been made and previously charged to the agents were not chargeable to their account but went back to the commission account.

"Q. Did you think that the company when it made a sale of a

cylinder scale and allowed as part payment for that cylinder scale the exchange of a scale owned by the customer paid a commission on the total selling price including the value allowed for the Exchange Scale?

"A. They allowed the commission on the net sale.

"Q. On the net?

"A. Yes.

"Q. That's what you understood?

"A. Yes.

"The Master: The net cash?

"A. That is to say, on the net, the difference between the price allowed on the old scale and the selling price of the new scale.

"Mr. Zane:

"Q. Turn back to your Exhibit 21, page 1.

"A. Yes, sir.

"Q. Do you see in red there "% to Net Sales (Total Agents' Commissions?

"A. Yes, sir.

"Q. "26.718%?"

"A. Yes, sir.

"Q. Is that percentage taken on a comparison of commissions with your net sales before deducting allowances or after deducting allowances?

"A. It is on net sales, that is the difference between the gross sales and the returned scales.

"Q. Yes. Now, you knew that on that amount of sales represented by allowances, $117,198.48, the company paid no commission, didn't you?

"A. Yes, sir.

"Q. Therefore in finding the ratio of commissions to sales you would have to take the percentage shown by the total commissions, $188,229.85, to $589,282.70, would you not?

"Mr. Meads: I object to the question. The witness has not testified that he obtained the commissions by multiplying the per cent of his figure by somethering in it.

"Mr. Zane: I am asking him if he would have to.

"Mr Meads: The witness has merely testified these two figures bear the proportion one to the other.

"The Master: Objection overruled.

"A. This 26.718 is merely a mathematical calculation and
569 is put in there to give you an idea what the ratio of total agents' commissions is to that net sales figure.

"Q. Yes, but if you were representing properly the ratio of agents' commissions to the amount of sales upon which commissions were allowed, you would have to take that ratio upon $589,282.79, would you not?

"A. We could do it that way or do it on the other figure.

"Q. Answer my question.

"A. I would not say it was any more proper than the other.

"Q. Read the question.

(Question read.)

"A. That's what you asked.

(Question reread.)

"Q. Answer that yes or no.

"Mr. Meads: I object. He has asked if you were going to do it properly and he has answered he didn't think one was any more proper than the other.

"The Master: Give your answer as you wish to give it.

"The Witness: I gave it.

"Mr. Zane: I will put another question to him.

"Q. Were commissions allowed on the net sales, $707,167.85, on that total amount?

"Mr. Meads: I object to the question unless he says allowed where, allowed by him or by the company? I object to the question because it is indefinite.

"The Master: I assume he means in his account that he has made up. Is that right?

"Mr Zane: Yes.

"A. Well, this figure of commissions represents the commissions credited to agents during the year on the sales.

"Mr. Zane:

"Q. Yes, you have already answered that you knew that that part of the selling price of sales which is represented by allowances paid no commissions, have you not?

"A. As I understand it, they didn't.

"Q. So that the amount of $117,198.48 paid no commissions?

"A. As I understand, they didn't.

"Q. Yes. Now, therefore, the amount of sales that paid commissions was $598,282.70, was it not?

"A. Well, those commissions would apply against that net sales figure.

"Q. Against that net sales figure?

"A. Yes.

570 "Q. Now, what is the percentage of your total commissions to that net sales figure which paid commissions, just tell me what it is?

"A. Well, I would have to figure it out.

"Q. All right.

"A. It is approximately 32.6%.

"Q. 32.6%?

"A. Yes.

"Q. Did you have occasion to refer to the sworn statement of Mr. Zolg in this case filed as the account of the company as to the proportion between commissions and net sales?

"A. No, sir.

"Q. Now you make an amount which you say is the "total amount undercharged to charge back as above" at the bottom of page 3 of exhibit 22?

"A. Yes, sir.
"Q. That is, undercharged to charge backs on the general ledger, is it not?
"A. Yes, sir, that account on the general ledger.
"Q. Yes. So what you have done is to add to the amount of $77,985.87 a total of $15,642.70 which is not found in that account on the general ledger?
A. Yes, sir.
A. It is included in that account on the general ledger.
Q. Thought you said that the total amount undercharged on the general ledger is $15,517.70 in that one item?
A. Yes, sir.
Q. The other item of $125 is also an undercharge as to charge backs account.
A. Yes, sir.
Q. So that the total of the two $15,642.70 is an undercharge on the general ledger?
A. Yes, sir.
Q. What you have done is to add to the amount of Marwick, Mitchell & Company's report from the books a total of $15,642.70?
A. Yes, sir.
Q. Which amount is undercharged as you say on the general ledger?
A. Wes, sir.
Q. And a part of that amount is $12,843.20 forfeited installments which the company received as forfeited installments out of cylinder scales?
571 A. Yes, sir.
Q. Now, on your next page you continue this charge backs account?
A. Yes, sir.
Q. Carrying over your total on the last page of $93,628.57?
A. Yes, sir.
Q. You have added one scale to the number of charge backs?
A. Yes, sir.
Q. Therefore you get one more scale into second hand scales, don't you?
A. Yes, sir.
Q. Now, your next item, the first item on page 4 of Exhibit 22, in this same corrected charge backs account, according to your correction made five years after the fact, you have an amount of $711.55. You are adding that also to charge backs?
A. Yes, sir.
"Q. That is added for the reason that you say "charge backs resulting from substituted shipments (I. E., where a customer first took a cylinder scale and later returned it for substitution by a fan scale) were understated by reason of their treating"—Do you mean by "their," Marwick, Mitchell & Company?
"A. Yes, it does refer to them.
"Q. —"were understated by reason of their treating with net differences in billing values instead of the full billing values." Now,

on the cash journal and the general ledger the figure entered was the net difference?

"A. Yes, sir.

"Q. Marwick, Mitchell & Company followed the books?

"A. Yes, sir.

"Q. And did not undertake to change or correct the books?

"A. Not the general ledger nor the combination cash journal.

"Q. Yes. You, however, corrected that entry upon the books by first entering on one side the full billing value of the scales that were returned and entering upon the other side the full billing value?

"A. In stating our accounts we have done that, yes.

"Q. You have done that. Thereby you added three more new cylinder scales to go into 2nd Hand scales?

572 "Mr. Meads: I object to the question. The testimony is repossessed scales.

"Mr. Zane: Well, a repossessed scale is very new.

(Question read at request of witness.)

"A. They were and would undoubtedly, the cost of them would find their way into 2nd Hand scales.

"Q. Now, do you know or have you any idea that those three scales were sold as 2nd Hand scales.

"A. I do not recall that they were.

"Q. Well, do you know anything about it?

"A. I probably could tell by looking at the voucher. I do not recall that now.

"Q. Would the voucher show their resale?

"A. I think it would. I am not sure about that. I don't know to which transaction you refer. You say three of those scales. Unless I can go right into the figure that makes up this $711.50, I could not tell whether the three scales were sold as 2nd Hand or not.

"Q. Well, do you know what the voucher shows?

"A. I would have to refer to my papers. You are asking me to testify about three scales in fact, but not letting me look at those papers.

"Q. Would you have the factory numbers in your papers?

"A. I would not.

"Q. Now, as to this other scale over here on page 3, No. 346, cylinder scale repossessed. You don't know whether that was sold as a new scale or a 2nd Hand scale either, do you?

"A. I don't know from sitting here. I might be able to determine if I saw the voucher and could examine the papers on it.

"Q. We don't want to take time now, but at the noon hour will you get those two vouchers?

"A. I am going to have my lunch at the noon hour and a rest.

"Q. Let me finish my question. Will you during the course of the noon hour get those two vouchers and have them produced so that at two o'clock you can tell us whether the voucher or vouchers show or shows the resale of those scales?

"A. I will say this, that if you will permit me to examine the working papers I will find out what the make-up of this $711.50 is and report on it.

"Q. All right.

573 "A. I cannot say whether they are resold or not.

"Q. All right, at the noon hour that can be done. Now, your next item on page 4 of your Exhibit 22 is for the "value of 8 cylinder scales returned to be substituted by a corresponding number of new scales shipped" and in the columns you have "6," you thereby add six scales to be turned over to the 2nd Hand scales, don't you?

"A. Yes. By a corresponding entry on page 2 the revenues get credit for the same amount.

"Q. Those six scales are turned over to 2nd Hand scales, are they not, on your account?

"A. The cost of them ultimately finds its way into 2nd Hand scale business.

"Q. The scales themselves according to your account were turned over to the 2nd Hand Department to be sold as 2nd hand scales, were they not?

"A. I do not know.

"Q. Does not your account represent that the whole of this 665 repossessed scales were turned over to the 2nd Hand Department to be sold as 2nd Hand scales?

"A. In our accounting with the 2nd Hand Department or 2nd Hand scale business we have treated the cost of these two scales in our 2nd Hand business as having been turned over to the 2nd Hand Department.

"Q. Well, that means that any revenue derived from the sale of those scales is to be a revenue for the 2nd Hand scales, does it not?

"A. Intended to be.

"Q. Yes, and therefore you would say, would you not, answering the question frankly, that your account represents that the whole of these 665 repossessed cylinder scales are turned over to the 2nd Hand Department to be sold as 2nd Hand scales?

"A. Yes, sir.

"Q. Now, this 6 cylinder scales transaction you say?

"In the accounts of Marwick, Mitchell & Company only the difference in the billing value was dealt with in the Charge Backs Account." Could that just as well read "In the accounts of the Toledo Scale Company upon the cash journal and the general ledger only the difference in the billing values was dealt with in the Charge Backs account?"

"A. Yes, it could have read that.

"Q. And this next could read "And this entry is required

574 to increase the amount of actual billing value of the scales originally shipped, and, per contra, in the gross sales to record the full value of the scales shipped in substitution in correction of the journal and the ledger?"

"A. Yes, it could.

"Q. The next item on page 4 of Exhibit 22 to which I desire to draw your attention is a "No. 381 cylinder scale returned in respect of which the 'Charge Back' entry was understated by Marwick, Mitchell & Co. in the amount of $60.00." The voucher you speak of is voucher 4660, July, 1911. Can you produce that voucher?

"The Witness: Mr. Zolg, will you obtain that voucher? It is Section 3 July, 1911, Voucher 4660.

"Mr. Zane:

"Q. And in the meantime can you find in the journal that is now in court the particular entry?

"A. Yes, sir.

"Q. I wish you would do so.

"A. (Witness refers to account in journal.)

"Q. Now, have you found it?

"A. Yes, here is the entry in the combination cash journal on line 60. The way they number their vouchers, they put "4600" at the top of the page, they put the serial number at the top of the page and the line supplies the last two numbers of the voucher. There is the entry; there is the entire entry across the line (indicating). I think that came through Charge Backs Account, maybe debits to sales or charge backs. There is the entry. It is $150 in the column headed Charge Backs Account.

"Q. Now, in the cash journal, $150 is entered in the Charge Backs Account on the cash journal?

"A. Yes, sir.

"Q. Is it entered on the debit or credit side of the account?

"A. That column is a debit column.

"Q. It is entered on the debit column of the Charge Backs Account?

"A. Yes, sir.

"Q. $150?

"A. Yes, sir.

"Q. And no remarks are made under the column headed "Descriptive?"

"A. No, sir.

"Q. The $150 entry covered how many scales charged back?

575 "A. One scale charged back.

"Q. Was that a cylinder scale?

"A. Yes, sir.

"Q. By your correction you add $60 to the Charge Backs Account, do you?

"A. No, sir.

"Q. What do you do with that $60 that's in the Charge Backs Account as you have it on page 4? Is that $60 added to the total of $93,628.57 at the top of the page?

"A. Yes, and that is for the purpose of reconciling the figures——

"Q. You have answered. It is added. And that $60 entered into the total of $95,401.59 at the bottom of the page, did it not?

"A. Yes, sir.

"Q. Now, will you refer to the voucher?

"A. I have the voucher. This voucher and also the next one, the one right behind it.

"Q. Now this voucher reads as follows, does it not?

"Accounting Dep't, Section No. —.

Date, 7-11.

Charge Back the following account:

Name, Joe Ciancio.
Location, Denver, Colo.
Sales Agents, H. L. Schulz, W. R. Crowley, H. C. Tucker, F. L. Ditzler.
Order Dated 5-18-11.
Scale No. 381-C Gold 86335. 253 Blue 60426. Amount, $290.00.
Reason: New contract and note settlement secured for the 253 Blue 60426 by H. L. Schulz same customer.
Disposition of Scale: 60426 in possession of Joe Ciancio. Denver, Colo. Bill 381. Chart C Gold 86535 to H. C. Tucker on consignment.
Disposition of Notes: Cancel and return to customer.
Approved by E. Rousek. Order L. J. M.

W. R. K.,
Treasurer.

576 *Entry.*

Debits.	Amount.	Credits.	Amount.
Scales Sales S. L.	10	Bills receivable	185.
Charge Books Blue	70	Sales Ledger	45.
Chge. Backs	150		
Dr. H. L. Schultz Pros. Sales Agent	20.50	Cr. H. L. Schultz Act	8
Dr. W. R. Crowley Pros. Sales Agent	30.75	Cr. W. R. Crowley Act	12
Dr. H. C. Tucker Pros. Sales Agent	30.75	Cr. Tucker	12
		Commission	50

Date, Jul. 22, 1911. Voucher 46—60."

The paper accompanying it is as follows:

"7-3-11 7-7-13. July 13-1911.
Joe Ciancia, 4700 Claude St., Denver, Colo., Denver County.
M 4.
H. L. Schulz, W. R. Crowley, H. C. Tucker, F. L. Ditzler, C. J. G. Denver. Del. by Agt. $10.00 cash $40.00 Allow marred. Balance monthly Payments secured by note.

1 253 Blue 60426 Sample 120.00
7-6 Or by cash, note & Allow marred 120.00

H. L. S. 8.00.
W. R. C. 12.00.
H. C. T. 12.00.
7 P.
Aug. 3, '11 7.00. Jan. 3, '12 7.00.
Sep. 3, '11 7.00. Feb. 3, '12 7.00.
Oct. 3, '11 7.00. Mar. 3, '12 7.00.
Nov. 3, '11 7.00. Apr. 3, '12 7.00.
Dec. 3, '11 7.00. May 3, 12 7.00."

"Now, you understood from that that the cylinder scale No. 86535, type 381, was returned?

"A. Yes, sir.

"Q. Where did you find the amount for the Charge Backs Account?

"A. It was indicated on the debit side of the voucher under the name Charge Backs $150.

"Q. How had that $150 been entered on the cash journal?

"A. It was placed in the column of Charge Backs Account which is a debit column $150.

577 "Q. Marwick, Mitchell & Company had charged how much of that $150 to cylinder scales?

"A. $90.

"Q. The difference of $60 you construed as being applicable to cylinder scales and you transferred $60 more?

"A. Yes, sir.

"Q. Now, on the next page, 5, you have deductions from cylinder charge backs account, have you?

"A. Yes, sir.

"Q. There are no deductions in the number of scales?

"A. No, sir.

"Q. But you have raised the number of scales in the cylinder charge backs account by how many in all?

"A. Eleven.

"Q. And they consist of one 346 cylinder which you say was repossessed, three cylinder scales which you say were repossessed, but a composite entry was made on the books, simply charging a difference, and six cylinders scales for which a substitution of other cylinder scales was made, and this one cylinder scale No. 381 just referred to in the voucher?

"A. Yes, sir.

"Q. That makes your eleven, does it not?

"A. Yes, sir.

"Q. So that you add eleven cylinder scales which by your system of accounting are transferred to 2nd Hand scales?

"A. The cost of them finds its way into 2nd Hand scales, yes, sir.

"Q. And the scales themselves by your system of accounting are transferred to be disposed of in the 2nd Hand Department?

"A. Yes, they are treated as having gone to the 2nd Hand Department.

"Q. There to be disposed of?

"A. Yes, sir.

"Q. Now, we were looking for the voucher for that first scale on page 3, No. 346, cylinder. You said you could find it from your papers?

"A. Well, I can get the number and we can get the voucher.

"Q. What is the number of the scale?

"A. The style number?

"Q. Well, the style number is here, 346.

"A. I still have to get the voucher. (Witness produces package of vouchers.)

578 "Q. By the way, first give me the cash journal entry in regard to that scale. What was it?

"A. That is a part of that shortage account of which we spoke.

"Q. It is a part of *he* shortage?

"A. Yes. I will get that voucher if you wish. (Witness produces voucher.)

"Q. The voucher which you have produced is the voucher which refers to the first item in your account on page 3 of Exhibit 22 which reads "#346 Cylinder Scale repossessed not included in Marwick, Mitchell & Company's statements?"

"A. Yes, sir.

"Q. This voucher reads as follows:

Mr. Thull: "Feb. 2, 1911.

Please charge the following to W. J. Mercer's shortage account:

$120.00	covering	scale #253 blue—65943.
15.00	"	Stimpson scale #55690.
120.00	"	scale #254 blue—71732.
135.00	"	" #256 blue—66882.
135.00	"	" #256 blue—70597.
135.00	"	" #257 blue—70460.
135.00	"	" #346 blue—57965.
125.00	"	" #254 blue—56939.
5.00	"	five #1 test weights.
1.50	"	one #112 scoop.
$926.50		

"Then charge W. J. Mercer's commission account with 40% of the above prices and credit these amounts to his shortage account. The $5.00 charge and the $1.50 charge of course carry no commission credit. We are instructing Mr. Ginter to credit Mr. Mercer with this stock as it is being charged to Mr. Mercer's shortage.

LEGAL DEPARTMENT.

FAC-MN.
Dr. Mercer (Shtge.) 926.50. o. k. W. A. R.
" " (Com.) 368.00.
Cr. Exch. Scales 926.50.
" W. J. Mercer Act. 368.00.
3. 4—26."

579 "Now, you saw from that voucher that the direction was to credit the account Exchange Scales $926.50.

"A. Let me explain that.

"Q. Did you see that on the voucher?

"A. That is not a direction as I understand it. I will explain just what it means.

"Q. Did you see these figures that appear on the account?

"A. I see that on the voucher item.

"Q. 'Cr. Exch. Scales $926.50,' do you know whose handwriting it is in?

"A. I do not.

"Q. Did you ascertain whose handwriting it was in?

"A. I didn't ascertain the one who did the writing, but I ascertained the facts about it.

"Q. I am not asking you what facts you ascertained. Now, the amount $926.50 on the cash journal was entered to the credit of Exchange Scales, was it not?

"A. Yes, sir.

"Q. And the sum of $368 was entered to the credit of Mercer's account?

"A. Yes, sir.

"Q. Mercer's account was debited Commission $368?

"A. No, sir. You said Mercer's account was debited Commission; did you mean to say that?

"Q. Yes. Well, the Commission Account was debited $368?

"A. Yes, sir.

"Q. Was the $936.50 entered anywhere as a total except in the Exchange Sales?

"A. Yes.

"Q. Where was it debited?

"A. Debited to W. J. Mercer's shortage $926.50 on the customers' classification record or combination cash journal as I call it.

"Q. Now, this voucher was accompanied by another document which reads as follows:

"Feb. 2, 1911.

Mr. Thull:

On Oct. 26th we paid 95c. covering shortage charges on stock which had been consigned to W. J. Mercer at El Paso, Texas. This amount was charged to Mercer's shortage account. As this would not represent a shortage which we could recover from the
580 bondsmen, please credit his shortage account with this amount and charge it to general expense, California District.

LEGAL DEPARTMENT.

FAC-MN.

Dr. Genl. Exp. CD. 95c.
Cr. W. J. Mercer Shtge. 95c.
4—25."

"It was also accompanied by another document. (Reading:)

"Feb. 2, 1911.

Mr. Thull:

On Nov. 4th we charged $63.36 to the shortage account of W. J. Mercer. This represents disbursements for storage and Exchange in connection with the recovery of the El Paso, Texas, stock. Please credit Mr. Mercer's storage account with this amount and charge it to General Expense California District. It would be impossible to recover this from his bondsmen.

LEGAL DEPARTMENT.

FAC-MN.

Dr. Genl. Exp. Calif. Disct. 63.36.
Cr. W. J. Mercer Shtge. 63.36.
4—24."

"Now, did you ever look up to see whether any recovery was made from the bondsmen of Mercer?

"A. No.

"Q. Do you know whether any recovery was ever made from the bondsmen of Mercer?

"A. No.

"Q. Now, there are on page 5 certain deductions from the cylinder charge backs which you have made. I want to ask you generally in regard to those deductions and your entries of them in different accounts from cylinder charge backs. Were those items on the books all in the accounts which Marwick, Mitchell & Company kept them in?

"A. They were all on the ledger account and cash journal of the company's set of books.

"Q. Yes.

"A. In those accounts.

"Q. Yes, so that Marwick, Mitchell & Company's account correctly represented the cash journal and the ledger?

"A. Only the cash journal and ledger, yes, sir.

"Q. Now, this item "Accessories, Returns and Allowances," do you know whether those were accessories that were only *unable* with cylinder scales?

581 "A. No, sir.

"Q. You have next '3 #405 Fan Scales returned by customers erroneously charged by Marwick, Mitchell & Co. as Cylinder Scales,' in your next item on page 5.

"A. Yes, sir.

"Q. Where do you take those scales away from, the total of cylinder scales returned by Marwick, Mitchell & Company?

"A. Marwick, Mitchell & Company had not included them as a unit of scales and therefore the unit of scale part did not operate in that particular adjustment, it was only the value of the three scales.

"Q. Well, where have you taken them away from, the 654 scales, number of charge backs by Marwick, Mitchell & Company?

"A. They had not been originally included in there.

"Q. How do you know that?

"A. Well, from the working papers I saw and from the summary I made, it did not appear they had.

"Q. You say here '3 #405 Fan Scales returned by customers erroneously charged by Marwick, Mitchell & Co. as Cylinder Scales.' Does not that show you that the three were in the number of charge back scales?

"A. In preparing their papers Marwick, Mitchell & Company whenever they did not include a scale as a unit they drew a circle around it and did not include it as a unit, and it is my recollection this happened to be one of those items where only the amount was taken up by them.

"Q. Have you got there the number of the scales, the factory number and the date? Your date has already been given in your direct as December, 1911.

"A. The voucher referred to on their working paper is marked June Section 1, No. 4325, and I think this reference here, one of my assistants looked it up and he evidently has recorded the number Marwick, Mitchell & Company had on their analysis sheet. You see it has been changed to '405,' so he evidently looked up the voucher and found there were three number 405s. Now, in Marwick, Mitchell & Company's analysis sheet from which this is drawn there is a circle around that and in footing their schedules we find that that was not included, so consequently it was not included here. That is my recollection of the particular transaction.

"Q. Did you have the customer's name there?

"A. He has Zevitas & Contus.

582 "Q. Your next item on page 5 is 'Second Hand Scales purchased at Branch Offices erroneously included by Marwick, Mitchell & Co. in "charge backs." ' By the way, let me inquire, have you any objection to using the correct name of this firm? Why do you always say Marwick, Mitchell & Company?

"A. Ever since I have been in the business I have always referred to it as Marwick, Mitchell & Company.

"Mr. Meads: It has already been explained that where they use the name of Marwick, Mitchell & Company they mean Warwick, Mitchell, Peat & Company, and they use Marwick, Mitchell & Company because it is a long name.

"The Master: That was explained on the direct examination.

"Mr. Zane: Now, you say this was erroneously included by Marwick, Mitchell, Peat & Company in charge backs, do you?

"A. Yes, sir.

"Q. Where did the cash journal enter that amount?

"A. The cash journal, that appeared in the charge backs and debits to sales column on the cash journal which is a part of the bookkeeping system.

"Q. Now, therefore the inclusion of it by Marwick, Mitchell, Peat & Company in charge backs followed the cash journal and the general ledger?

"A. Yes, sir, but not the vouchers.

"Mr. Zane: I move to strike out 'but not the vouchers.'
"The Master: It may be stricken out.

"Mr. Zane:

"Q. Are these scales Toledo scales?
"A. I can't say unless I examine into all the items that go to make it up, there are a number.
"Q. Were these second hand scales purchased by the Toledo Scale Company or sold by the Toledo Scale Company?
"A. They were second hand scales purchased by the company.
"Q. They were, don't you know, Toledo cylinder scales?
"A. I don't know that all of them were. I know some of them were.
"Q. And it was on this kind of a deal that the company paid that amount $249.55 in order to get their scales back?
"A. Yes, sir.
"Q. Certainly. Where now do you put this amount $249.55 which you have taken out here, where do you put it?
583 "A. It has been charged to 2nd Hand Stock Account in our method of accounting.
"Q. Yes, so you have put it in 2nd Hand scales?
"A. Yes, sir.
"Q. Do you know whether those scales that they paid this amount to get back were new scales or not?
"A. Well, I know they were not new when they got them back.
"Q. Do you know whether they were resold as new scales?
"A. I can't say as to that.
"Q. Your next entry is '8 scales originally sold as Second Hand, "Pulled," Repossessed or Returned, treated by Marwick, Mitchell & Co. as new Cylinder Scale Returns or Repossessions,' how on the cash journal and the general ledger were those eight scales entered?
"A. On the general ledger and cash journal they were entered as charge backs as stated here.
"Q. Were not those eight scales in the original sales of new cylinders?
"A. I cannot say to that.
"Q. Well, if they were, then you have made a mistake in not deducting them here, have you not?
"A. No, for the reason that I assigned before, on Marwick, Mitchell's papers wherever they didn't include a unit they draw a circle around it and inquiries and tests of the purposes of those figures disclosed that they had not included them as a unit.
"Q. Refer to your working papers and find that 8 with a circle drawn around it.
"A. I will make an attempt to pick out each of those items.
"Q. Perhaps you could give that to me in the morning.
"A. I can answer now. I believe I am in error, that eight scales should be included.
"Q. And eight scales should be deducted from your 665?
"A. I have here a circle around it which means it should not have been handled. I will inquire into that between now and tomorrow

morning and make search, and if it is a mistake, I will be glad to admit it.

"Mr. Meads: That's merely as to the question of units.

"The Witness: Yes, it is a question of units. It is perhaps an error on us in not including it although the principle, all the way through we followed Marwick, Mitchell's principle and in some way or
584 other these eight scales were circled and dropped out.

"Mr. Meads: Perhaps there should be eight more units.

"Mr. Zane:

"Q. Now, how do you know these eight scales were originally sold as second hand?

"A. The returned vouchers, to my recollection, which were examined by us, stated they were rebuilt or second hand scales.

"Q. Marwick, Mitchell & Company had them original sales?

"A. No, you don't get my point about the examination of the voucher, the voucher showing the return——

"Q. I understand.

"A. I don't know whether that had preeviously been considered as sales because I didn't take the sales off.

"Q. You don't know whether these eight scales are in the United States Sales or not?

"A. No, I do not.

"Q. And you don't know whether these eight scales were on the cash journal and the general ledger as United States Sales, do you?

"A. Yes, sir.

"Q. But you have deducted this amount from charge backs as if they were, have you not?

"A. No.

"Q. All right. That's an answer.

"Mr. Meads: If you want to add to your answer, Mr. Witness, you have a right to.

"Mr. Zane: He said no.

"Mr. Meads: That may be not all he wants to say.

"Mr. Zane: I don't care what else he wants to say.

"The Witness: I wanted to say that the return of the scale was not considered as a charge back against the U. S. Sales but was carried to the 2nd Hand business.

"Mr. Zane:

"Q. Exactly, and here you are taking it out of the Charge Backs Account?

"A. Yes, sir.

"Q. Which is in effect reducing the debits to sales?

"A. Yes, sir.

"Q. Which is in effect increasing the sales?

"A. Yes, sir.

"Q. Your next item is 'Customers' Uncollectible Accounts written

off, treated by Marwick, Mitchell & Co. as Cylinder Scale
585 "Charge Backs" and by Price, Waterhouse & Co. as Bad Debt Losses.' On the books where did that item figure?

"A. On the ledger accounts and cash journal they were included in the Charge Backs Account.

"Q. Yes. You took and put it in Bad Debt Losses?

"A. Because the voucher said so.

"Q. Well, you did it?

"A. Yes, sir.

"Q. Do you gain any advantage by that against the accounting?

"Mr. Meads: He gains the advantage of being right.

"Mr. Zane:

"Q. Do you gain any advantage in money on the accounting?

"A. It is a gain for the cylinder business. It adds that much more to the sales.

"Q. And you get three per cent on the Bad Debit Losses?

"A. This was taken out here and charged to the Bad Debt Reserve Account.

"Q. Bad Debt Losses?

"A. Well, Bad Debt Reserve; it was charged against the Bad Debt Reserve.

"Q. What page have you got that charge?

"A. There is no exhibit or no page in Exhibit 22. In the working papers we have in which we arrived at three per cent of the gross sales, a deduction for this amount has been made. I will show it to you, Mr. Zane, if you care to see it.

"Mr. Meads: Better talk to the record, Mr. Witness. If you show it, show what you show it from.

"Mr. Zane:

"Q. Suppose before we pass from this attempt of yours to rectify the scales sold and your operation in putting a lot of Toledo scales in 2nd hand scales, this kind of a transaction had taken place. On the 28th day of February, 1911, cylinder scale, factory No. 85629, type no. 383, sold at a price of $195 to the Idaho Provision & Packing Company Limited of Boise, Idaho, was never delivered. As a matter of fact, the reason for the non-delivery being that the agent was unable to effect a delivery and the scale was "pulled" by J. F. Storer and went to the consignment account. You would treat that as going into 2nd Hand scales, would you not?

"Mr. Meads: I object to the question, if your Honor please. It is predicated on nothing in this record.

586 "Mr. Zane: I am putting a case to him.

"Mr. Meads: Yes, you are putting a case which is not warranted. You are not warranted in putting any supposititious case which may occur to you.

"The Master: He may do that with an expert witness to test his theory of accounting. I will overrule the objection.

"A. From your question, Mr. Zane, you say "pulled" which in effect means——

"Q. I mean to say——

"A. Yet me answer the question. From your question you said 'Pulled' which would indicate that delivery had been effected.

"Q. I said 'never delivered.'

"A. It could not be 'never delivered' and 'pulled.'

"Q. All right, we will change the question.

"The Master: Strike out the word 'pulled' and answer the supposititious question as to how you would handle the transaction.

"A. Well, in that case the sale would be cancelled by a charge through charge backs of the amount that it had been credited on sales and the cost of it would probably be charged to the New Scale Stock Account.

"Mr. Zane:

"Q. Now, if a transaction of this kind took place and if the sale is in the number 5297 scales sold according to your account and is also in the number 665 scales 'pulled' and the transaction I have stated to you is the actual transaction, your account is wrong to that extent, is it not?

"A. I concede—If that account is wrong to that extent, I will admit it.

"Q. And if the scale has gone as a repossessed scale into the 2nd Hand scales, that part of your account is wrong?

"A. Well, that I can't answer because I don't know what you mean by putting it into 2nd Hand sales or 2nd Hand scales.

"Q. Well, you have answered several times, but you attempt to go back on it now and then, that all the repossessed Toledo Scales you transferred to be sold to the 2nd Hand Department, have you not?

"A. To be sold by the 2nd Hand Department?

"Q. Yes.

"A. Yes, sir, to the best of my knowledge and belief with the information that I have.

587 "Q. If the transaction was of the character I have stated to you and that one scale is in the gross number of scales sold according to your account and is in the charge back scales according to your account, your account to that extent is incorrect, is it not?

"A. The 2nd Hand account to the extent of the cost of that scale which was transferred into 2nd Hand account is incorrect.

"Mr. Meads: But only as to cost?

"A. As to cost. I qualified that.

"Mr. Zane:

"Q. Well, suppose that scale were sold over again as a new scale, would not it figure then twice in your sales column of new scales?

"A. It would figure in the new scales account, but there would not be sufficient cost charged against it in the new sales account to take up the cost of it because it had erroneously been included in the 2nd Hand scales.

"Q. I am not asking you anything about the 2nd Hand Department. I am asking you if a scale is not delivered and is sold over again as a new scale it figures twice in your sales of scales, does it not?

"A. Yes.

"Q. Now, if a repossessed scale is sold over again as a new scale, it figures twice in your sales of scales, does it not?

"A. As a sale, yes.

"Q. Therefore you would figure two bad debt reserves against that scale, would you not?

"A. Well, yes, if you predicate it on gross sales, that's true, you would charge two bad debt reserves on it.

"Q. And you have made your reserve on gross sales, have you not?

"A. Yes, sir.

"Q. Now, you have in your commission account in your commission working papers there, have you not, the sales of 2nd Hand scales during the year 1911?

"A. I have commissions on sales of 2nd Hand scales.

"Q. You have marked certain of those sales as cylinder sales, have you not?

"A. I don't recall without reference to the papers.

"Q. You have marked some of those cylinder scales as Toledos and some as Daytons, have you not?

"A. I can't answer without referring to the papers.

588 "Q. Now, I will ask you to refer to the papers and see if that is not the fact.

("Question read at request of witness.)

"A. Call those the working papers please.

Going back to the question which refers to sales, do you mean by that commissions?

"Q. You have allowed a commission on a sale of 2nd Hand scales, have you?

"A. And I have called it 2nd Hand commission.

"Q. And opposite that commission you have got marked the character of the scale, have you not?

"A. In some cases, yes. I think for the first three months we did mark them, perhaps they are marked for the entire year.

"Q. Oh, look and see if you have not marked them for the entire year.

"A. Not all of them.

"Q. How do you know?

"A. There are some that are not marked.

"Q. How do you know there are any cylinder scales in there if they are not marked?

"A. You didn't ask me as to cylinder scales.

"Q. I asked you if you did not have cylinder scales commissions, 2nd Hand, marked.

"A. And I said yes, some of them, and you said 'Look and see if you have not got them for the entire year' and I said no, there are some that are not marked.

"Q. And I said if they are not marked there as cylinders and in other cases they are marked as cylinders, how do you know those not marked are cylinders?

"A. Well, I don't know.

"Q. I thought not. Now, how many 2nd Hand sales upon which commissions are allowed have you marked during the year 1911 as 2nd Hand cylinder sales?

"A. I cannot now say.

"Q. I will ask you to refer to your working papers and tell me the number.

"The Witness: If the Master please, there are perhaps two hundred sheets here, and as to marking each scale they are incomplete.

"Mr. Zane: We object to that, his statement that it is incomplete. I have cross examined him upon the point and he says he does not know that any of those sales were cylinders, but he has
589 got some marked. I have asked him to tell the number that are marked as cylinders. Mr. Hall footed those this morning.

"The Master: Can you furnish that number, Mr. Bowman?

"The Witness: I cannot.

"Mr. Zane:

"Q. Why?

"A. Because I have not footed those that are marked.

"Q. That's what I say. Foot those that are marked and tell us how many.

"A. It would take some time. If you will let that go over sometime this evening, I can get it for you.

"Q. We want it from the papers now because we know what those papers are.

"The Master: How long would it take?

"The Witness: It would take perhaps half an hour or three quarters.

"Mr. Zane: Mr. Hall did it right here this morning in less than ten minutes.

"The Master: Do you want to wait for it?

"Mr. Zane: I do because it is important.

"The Master: Go ahead then.

(To the witness:) Now, do you know what is wanted?

"The Witness: He wants to know the number of scales that are marked, that is, the commission items of the 2nd Hand scales that are marked cylinder in the second hand column on the working sheets.

"The Master: Is that right, Mr. Zane?

"Mr. Zane: Cylinder Toledos. There are a lot of Dayton cylinder 2nd Hand and we are not concerned with them here, cylinder Toledos.

"A. (After an interval of some moments.) I have it now.
"Q. What is the number of cylinder scales Toledos in the year 1911 that are marked as Toledo cylinders in your allowance of 2nd Hand commission account, just the debits on your working sheets?
"A. Marked on the working sheets which I designated as commission debits in the second hand column, those that are marked I find to be 66 which I think is approximately correct.
"Q. Well, it is either 66 or 67, is it not?
"A. There is a difference of one by reason of a split be-
590 tween a fan and a cylinder which was not made, so part of the commission on the one item would be a cylinder.
"Q. What is the last month of 1911 that the end of those marks occur?
"A. They are marked all the way through to December, there being a number of items missing that are not marked.

"Mr. Zane: We move to strike out "a number of items missing that are not marked."
'Mr. Meads: That should stand.
"The Master: It is not responsive. Motion sustained.

"Mr. Zane:

"Q. Now, whose handwriting is that marking in?
"A. In a number of assistants' who were assigned to the work.
"Q. In the handwriting of a number of assistants, and tell me the names of them.
"A. Mr. Binkowski, Mr. Hansen, Mr. Darrah, Mr. O'Sullivan, Mr. Wenke, Mr. Booth, Mr. Watson, Mr. Stanley and I think there were some in my own handwriting, yes, sir, some in my own handwriting.
"Q. Now, please go to page number 6 of Exhibit 22. Oh, did you have it worked out on that page by months?
"A. No, I did not, I just took those by sheets and I think the months are mixed up through there.
"Q. On that sheet at the bottom of a page you have this account apportioned as chargeable as determined by a detailed analysis, have you not?
"A. Yes, sir.
"Q. Now, this is the allowance for Toledo scales taken in exchange for new scales sold?
"A. Yes, sir.
"Q. Both fans and cylinders, of course?
"A. Yes, sir.
"Q. And you feel certain that you have apportioned that account, the sales of new scales, correctly by your detailed analysis?
"A. As correctly as I think it is possible to be done.
"Q. Your amount of allowances made as against the sales of

cylinder scales is $23,631.03 after you have made certain changes in the account?

"A. Yes, by this statement.

"Q. And you are certain that all of that $23,631.03 are exchange allowances again-t the gross cylinder scales (sales)?

591 "A. Yes, as far as it was possible from the condition of the records at our command, to do so.

"Q. Well, that $23,631.03 is apportioned by detailed analysis?

"A. Yes.

"Q. So that you feel reasonably certain of that?

"A. Yes, sir.

"Q. Now, the gross number of cylinder scales sold are 5,329 scales, gross sales?

"A. Yes, as shown by Marwick, Mitchell & Company's papers.

"Q. Yes. And those Toledo Allowances are the allowances made against those 5,329 scales, gross, are they?

"A. Yes, against those scales.

"Q. And you have allowed and taken out of the account of Toledo Scale Allowances every item of allowance that goes against the 654 repossessed scales, have you, or 665 repossessed scales?

"A. Yes, sir, as far as I know they were taken out in the course of the detailed analysis.

"Q. I unintentionally fell into an error there, and I hope I did not mislead you. I want to read from your column of gross sales which is 5,237, is it not?

"A. Yes?

"Q. And your repossessed number of scales is 665?

"A. Yes.

"Q. Now, as I say that leaves a balance of 4,632 scales sold in the way of "firm" *accounting* to your account?

"A. Yes.

"Q. And these allowances of $23,631.03 are all allowances on those 4,632 net scales?

"A. Yes, sir.

"Q. Now, do you feel certain of that?

"A. Well, as I understand your question, I feel certain that I am correct.

"Q. And you are reasonably certain you are not mistaken about it?

"A. Well, reasonably certain if I understand your question correctly.

"Q. Yes. Turn over to page 7. That is the Exchange Scale Allowances and includes all the allowances against the selling price of cylinder scales made for scales taken in exchange of other makes than Toledos?

"A. Yes, sir.

592 "Q. At the bottom of the page you have apportioned that account of Exchange Scale Allowances by a detailed analysis?

"A. Yes, sir.

"Q. And you have apportioned $84,793.27 against the cylinder sales?

"A. Yes, sir.

"Q. And those net cylinder scales on your account are 4,632 sales?

"A. Yes, sir.

"Q. And this amount of Exchange Scale Allowances, $84,793.27, is applicable to and apportionable to those net sales of 4,632 cylinder scales?

"A. To the net sales of cylinder scales, yes.

"Q. And according to you, they are 4,632 cylinder sales?

"A. Yes, at the value of——

"Q. Of $707,167.85?

"A. Yes, sir.

"Q. Now, you are just as certain of that in regard to Toledo Scales as you are in regard to Exchange Scales?

"A. Yes, sir.

"Q. And you feel that you cannot be mistaken?

"Mr. Mead: Your Honor, I object.

"Mr. Zane: This is an important matter.

"The Master: Objection overruled.

"A. Well, I feel reasonably certain that these figures are correct. I may be mistaken in some small details, but I am reasonably certain of the accuracy of the figures that I mention.

"Mr. Zane:

"Q. And that these figures apportioned by you, viz., the amount apportioned for Toledo Scale allowances and the amount apportioned for Exchange Scale Allowances are properly apportionably and applicable to the net sales of 4,632 cylinders at the net price of $707,167.85?

"A. Yes, sir.

"Q. Will you produce your detailed analysis of the Toledo Scale Allowance Account?

"A. (Witness produces document.)

"Q. Now, will you also produce your summary of this account which went into it with the figures that are put on page 7 of Exhibit 22?

"A. (Witness produces documents.) There is the summary of that analysis. Now, they are analyses——

"Mr. Meads: Wait a minute. He has asked you to produce. Now, don't answer any questions until he puts them.

593 "Mr. Zane:

"Q. Now, this summary shows a total of how much?

"A. This summary, which is a preliminary summary by the way, shows a total which agrees with the account on the general ledger of $29,051.47.

"Q. Yes. Now, where on your summary did you show your total of $27,618.72?

"A. That is shown on page 6 of Defendant's Exhibit No. 22.

"Q. Now, you know I want the summary which reconciles your working sheets with the figures on page 6 of Exhibit 22.

"A. There they are, yes, on page 8 (indicating).

"Q. Yes, but you took those figure on page 6 from some summary, did you not? Is this your first calculation of a summary?

"A. There are some more. (Producing large sheets.)

"Q. Now, on the sheet which you show me where is the figure $27,618.72, your total?

"A. Here is the summary here. There is $29,051.47. (Indicating.)

"Q. Yes. That's from the books?

"A. Then they are adjusted in respect to these items you see here. (Referring to working sheet that is not cross footed.)

"Q. That is on this working sheet?

"A. This is the working sheet.

"Q. But you have not cross footed and made your total of $27,618.72?

"A. That's a mere detail. No, it has not been done.

"Q. Now, where on your summary sheet is found your figure of $23,631.03 apportionable to cylinder scale business?

"A. Here it is on this rough working sheet.

"Q. On the rough working sheet?

"A. Yes, sir.

"Q. Now, will you please turn to your working sheets of the details?

"A. Yes, sir.

"Q. And tell me whether in your details you have specified each allowance in the total of $23,631.03 against a specific sale.

"A. Yes, sir, as far as the records would disclose, that item was, that particular item was apportioned to specific sales.

594 "Q. Now, the unallocated items are found down below?

"A. Yes, sir.

"Q. I am drawing your attention to the item which you say was all allocated.

"A. Yes, allocated between cylinder and fan business.

"Q. Now, did you specifically allocate each allowance of which $23,631.03 is the total to a specific sale of a cylinder scale?

"A. Just what do you mean by a specific sale?

"Q. A particular sale of a particular scale?

"A. Yes, sir.

"Q. Now, will you turn to the month of January of your detailed analysis?

"A. Yes, sir.

"Q. And that is on the sheet which you show me?

"A. Yes, sir. This begins with January and goes all the way through the year.

"Q. Yes. Now, when you found these individual items in the Toledo Scale Allowance did you locate the year of the sale against which the allowance was made?

"A. The first three months of the analysis or first two months of the analysis I think we did.

"Q. Where are the——

"A. Wait a minute. But the later months of the year we did not.

"Q. Where are the locations of the specific year of the sale against which the allowance was made found on these working sheets?

"A. I don't understand your question. You speak about specific sales.

"Q. I have not said anything about a specific sale. You have said you have put down the year of the sale against which the allowance is made. Now, I asked you where on your working sheets have you got the year put down.

"A. On the Toledo Scale Allowances. I recall now that the year was not put down during every part of the year.

"Q. Look at this working sheet which is entitled "Summary Toledo Scale Allowances, year 1911," under the general heading "Debits and Credits," below that the sub-heading "Cylinders," you have got sub-headings "Fans," "Cylinders," "2nd Hands," have you not?

"A. Yes, sir.

"Q. Then you have got below the word "Cylinders" the
595 sub-sub-heads "Current," "Prior," "Future." What does "Prior" mean?

"A. The original intention was to divide those sales up between these three headings which you see, but after three months, after we had done three months we found it was going to take us a considerable amount of time that was not given us to do the work, so we had to abandon it and those columns are superseded in this total here, they have no relation to this down here.

"Q. After three months——

"A. Yes, sir.

"Q. —you changed your plan, but for that three months you showed the allowances whether made on current sales of the year 1911 or on sales made prior to the year 1911, didn't you?

"A. Yes, sir.

"Q. Those three months were January February and March of 1911?

"A. Yes, sir.

"Mr. Zane: Will the reporter mark this sheet with an exhibit number for identification?

(Said sheet marked for identification Plaintiff's Exhibit 48, Nov. 24, 1916, C. B. M., Master.)

"Q. I refer you now to other pages of your detail and ask you if you do not find in that detail the notation of the year of the sale against which the allowance is made clear into the month of November of this year 1911?

"A. There are such notations on some of those schedules which were done by different persons, but it was not completed is my recollection of it.

"Q. That is to say, those notations of prior years would not contain all the sales of prior years?

"A. I don't know as to that. I didn't examine into that feature, if it was put down there. It was intended to be abandoned.

"Mr. Zane: We move to strike out "It was intended to be abandoned."

"The Master: That may stand.

"Mr. Zane:

"Q. Well, let me ask a question.

"—. I want to take an exception if that's allowed to stand.

"Q. Whose handwriting are these pages in?

"A. I do not recall just now whose it is.

"Q. Well, don't you know that figuring there?

596 "A. Why, I can't say positively.

"Q. Well, your best judgment.

"A. It appears to have been done by two or three, I don't know exactly who they were. You see there were eight men on this job and I could not keep track of all their writings.

"Q. Yes. Now, look at the month of November in this detailed analysis. Do you notice in that detailed analysis the notation of the year in which the sale was made against which the particular Toledo Scale Allowance is made?

"A. In one case on that sheet.

"Q. In November?

"A. Yes, sir.

"Q. Do you notice any case still further on than November?

"A. Yes, on the next sheet.

"Q. How many cases?

"A. Four. On the next sheet none.

"Q. And the next sheet contains only four entries, does it not?

"A. The next sheet none.

"Q. But the next sheet, is that for the month of November or December?

"A. That's December.

"Q. That next sheet is for the month of December. I asked you for November?

"A. Yes.

"Q. Now, you find in November of 1911 a notation of five different cases where the year of the sale of the cylinder scale against which the allowance is made is put down as in the preceding year 1910?

"A. Yes, sir.

"Q. As a matter of fact then, you have included in this account as an allowance made against sales of cylinder scales of the year 1911 allowances that were made, not in this year, but the preceding year 1910, have you not?

"A. Yes, sir.

"Q. Then this amount $23,631.03, Allowances for Toledo Scale Exchanges, is not applicable to the 4,632 cylinder scales sold in the year 1911 at a net value of $707,167.85?

"A. Strictly speaking, they are not.

"Q. Now, that is true, is it not? So when you answered that you knew from your detailed analysis that this account of Toledo Scale Allowances was all of it as to the $23,631.03 allowances
597 made upon the sales of 4,632 scales sold at the net value of $707,165.85, that was not true, is not that so?

"A. It was not true as to specific sales, but the balance is apportioned between fan and cylinder scale business of that year.

"Q. Yes, but when you say that you allocated those Toledo Exchange Allowances against specific sales and that those specific sales were a part of the 4,632 scales sold in that year for the net value of $707,167.85, your answer was not true, was it?

"A. Strictly speaking it was not.

"Q. Now, the same statement that your answer was not true applies to the Exchange Scale Allowance Account, does it not?

"A. It applies to this part of it——

"Q. Yes.

"A. —wherein you say the allowance applied against the specific sale of the scale made in the year in which the sale was made. It is not the same. The apportionment has been made on, the apportionment of Exchange Scale Allowances has been made on the new cylinder and new fan scale business of the current year.

"Q. You did not allocate that account to specific sales in the year 1911, did you?

"A. Not in the year to which the sale was actually made, true.

"Q. So that this amount of $84,793.27, Exchange Scale Allowance, apportioned by you against sales of cylinder scales 4,632 sold at the net value of $707,187.85 is not specifically allocated to those sales?

"A. Strictly speaking, it is not.

"Q. And your answer that every part of that $84,793.27 was applicable to and specifically allocated to sales of scales of the number of 4,632 sold in the year 1911 at the net value of $707,-167.85 is not true?

"A. Strictly speaking, it is not.

"Q. Now, on your working sheets for the Exchange Scale Allowances you have put down the years, have you not, of the sale against which the Exchange Scale Allowance is made?

"A. You mean the year in which the sale was made?

"Q. Yes?

"A. I don't know whether it is true of the year.

"Q. Just refer to them and see if it is not true.

598 "A. Exchange Scale Sales you said, didn't you?

"Q. Look for your year put down of those sales against which you have specifically allocated all of this account.

"A. I don't see them down here.

"Mr. Zane: Oh, look at his working papers and tell him where the years are.

"The Witness: These are the credits. (Indicating).

"Q. Yes. Take the debits.

"A. Well, I see they are marked, but I want to impress you with this idea, they have not been entirely marked because I recall in-

structing them at first to mark and some of them did and some did not.

"Q. Then there are probably more than shown on the paper?

"A. There may be more and may be less.

"Mr. Zane: Will you mark the paper produced by the witness Plaintiff's Exhibit 49 for identification?

(Said paper marked for identification Plaintiff's Exhibit 49, Nov. 24, 1916, C. B. M., Master.)

"Mr. Zane: Now, the other sets of working papers I would like to have identified as 50 and 51.

"Q. Where is the set that will contain the dates?

"A. I present them to you. (Handing papers to Mr. Zane.)

(Said set of papers marked for identification Plaintiff's Exhibit 50, Nov. 24, 1916, C. B. M., Master.

"Q. Now, give us your summary for the Exchange Scale Allowances, your complete summary where you tied up what you have put in evidence.

"A. There you are. (Handing papers to Mr. Zane.)

(Said papers marked for identification Plaintiff's Exhibit 51, Nov. 24, 1916, C. B. M., Master.)

"Q. Mr. Bowman, will you look at page 5 of your Exhibit 22. I want to ask you a question about an item I passed over. The item is the third one on that page and it reads "Second Hand Scales purchased at Branch Offices erroneously included by Marwick, Mitchell & Co. in 'Charge Backs' ". Now, on the books that was in the Charge Backs Account, was it not?

"A. In the general ledger account, yes.

"Q. And is in the journal?

"A. And in the combination cash journal.

"Q. Now, you found that that transaction was an amount
599 paid to repossess certain Toledo scales which were bought by the company at below cost?

"A. I don't know as they were all Toledo scales, I am not certain as to just the type of them, but I know they were repurchased at public sale.

"Q. You gave the number of the vouchers applying to those 2nd Hand scales as 5371, 5376, and 5377 in your direct examination, did you not?

"A. I perhaps did, I don't recall.

"Q. I wish you would refer to your working sheet there and tell me all the information you glean from your working sheet as to that transaction.

"A. It is made up of a number of transactions.

"Q. Yes, how many?

"A. In the debits to sales there are six transactions.

"Q. Six transactions?

"A. Yes.

"Q. Now, what is your information in regard to them on your working sheet? Give us the first one and so on.

"A. I see a notation here April 19th $20.00 is marked "Purchase of No. 78 56661."

"Q. Is that a cylinder or a fan scale?

"A. From the type number I should say it was a fan scale.

"Q. Now, what is the next one?

"A. The next one is June 26th, $50.00, scale 347B 4603 purchased by Frisco.

"Q. Are you sure you have got that number right—4603?

"A. That's the number I have down on the sheet. I think that was copied from Marwick, Mitchell's papers.

"Q. That's your voucher, is it not? It could not be the factory number.

"A. I doubt if it is the factory number, it probably is the voucher number.

"Q. That's a 347? Now, you know that's a cylinder?

"A. Yes, that's a cylinder.

"Q. And your notation is there "Purchased by Frisco"?

"A. Yes, sir.

"Q. Well, where did you get the information that you gave on your direct examination that that $50 was paid to repossess that scale? You didn't have the voucher and you were testifying. Now, where did you get the information?

"A. I discussed that item with Mr. Zolg and asked him how
600 that came about and he told me the process by which they repossessed them.

"Q. Well, wait *just* a moment. I am not asking you for what Mr. Zolg told you, but that information came from Mr. Zolg?

"A. Yes.

"Q. Did you get it from the voucher, any from the voucher?

"A. No sir, nothing further than this told me, that is, on the working paper which was copied from Marwick, Mitchell & Company's working papers and then supplemented by such information as I got from Mr. Zolg.

"Q. Well then, there is no use going to the voucher on that one. Now, what is the next transaction?

"A. September 14th $65 marked "Scale 84, No. 83693, purchased by Frisco."

"Q. You have not got the voucher number there, have you?

"A. No, sir, I have not.

"Q. Now, that was a cylinder?

"A. 84, yes, that would be a cylinder.

"Q. Do you know whether those two cylinder scales had been sold as new scales?

"A. I do not.

"Q. Now, you got no information from the voucher on that?

"A. I personally didn't. This examination was done by one of the assistants on the work.

"Q. Well, you have not any reference to the voucher number there?

"A. No, there is no voucher number here. I think this 83693 is the scale number.

"Q. Oh, yes, that's the scale number unquestionably.

"A. There is no voucher number.

"Q. And the "84" of course you know is a cylinder?

"A. Yes.

"Q. Well, give us the next transaction.

"A. October 2nd, $24.55, amount expended in recovering scale No. 70744 254 Blue.

"Q. Well, did you think that was a cylinder or a fan?

"A. That was a fan.

"Q. Have you got a voucher number for that?

"A. No, there is no voucher number.

601 "Q. Now, your next transaction.

"A. October 5th, $45, to purchase scale 50144-345 from Dan Stouky.

"Q. Any voucher number given there?

"A. There is not. This came through the cash book by the way. At least they appear to have come through the cash book in which case there would not be any voucher.

"Q. Did you find anything supporting the payment made through the cash book?

"A. I don't know as to that. This was examined by one of the assistants as shown and he has not made any notation as to where he got his information.

"Q. 50177 is the number of that?

"A. Yes.

"Q. And the type number 345, that was a cylinder?

"A. That was a cylinder, yes.

"Q. Now, what is your next notation there?

"A. November 20th, $40, scale 3450 No. 76494. It was recovered in New York somewhere.

"Q. That was also a cylinder?

"A. Yes, sir.

"Q. And your next one? No, you have given us six.

"A. Well, there are two more transactions that come from another source.

"Q. All right. In that total?

"A. Yes, in that total of $244.55. March 31st, No. 79 scale purchased, $45.00.

"Q. That was a fan?

"A. That number would indicate it was a fan, yes.

"Q. What was the next transaction?

"A. That was all. That makes the $244.55.

"Q. You have not any more information?

"A. There are two other transactions that go in there. That makes $289.00, and there are two others that go in there. Now, here is another item in February, No. 53 purchased by Frisco office, $50.

"Q. What is the next?

"A. And on November 5th, or in November rather was an item of

$5 marked "Additional No. 53 purchase." That gives you how much?

"Q. Well, that gives us a pretty heavily overloaded item. That's $344.55.

602 "A. I see that one has been doubled up here somewhere.

"Q. Your next you see is $249. You are almost one hundred dollars out of the way.

"A. Oh, that $50 does not go in there.

"Q. Not in?

"A. Nor the $5.

"Q. They are not in?

"A. There is a $5 credit, a refund, that goes in there instead of that. I will get the date of that for you. Just a minute.

"Q. $5 refund, that would be a credit?

"A. That would be a credit, yes. Cut the $50 out of there and the $5.

"Q. Now, you have got too much, it is $40 too much.

"A. I will fix it for you. Those first six items total $244.55. Now, then, the item of March 31st, No. 79 scale purchased, $45, goes in.

"Mr. Meads: That makes a total of $289.55?

"A. Yes, $289.55.

"The $5.00 is reinstated.

"Mr. Zane:

"Q. As a deduction?

"A. No, an addition. Then here is a credit Charge Backs Account, February, reversing $50.00 account expenses, Frisco expenses to cover purchase of No. 53 Green, 85422, from W. Davidson, 4/9/10.

"Q. Well, that was a credit in Charge Backs account, but it was a credit on a fan scale. What's that got to do in the cylinder Account? Was it in the cylinder charge backs?

"A. There was $244.55. One item was in the division of cylinder charge backs.

"Q. $244.55 in cylinder charge backs?

"A. Yes.

"Q. And the other is that $5.00 item?

"A. Yes, I think those are the figures.

"Q. Now, turn to your page 6, the first entry there is of the Total Toledo Scale Allowances as per the books $29,051.47. Now, you have added to that first—this is page 6 of Exhibit 22—an allowance on three Toledo Scales taken in trade on sale of cylinder scales erroneously included in charge backs of fan scales. That on

603 the journal and the ledger was where? That was not differentiated as between cylinders and fans, of course, was it?

"A. No on the general ledger nor the cash journal.

"Q. No. And did you get the voucher?

"A. Yes, the vouchers were examined in the course of the examination.

"Q. What information have you written on your working sheet there?

"A. August, Section 1. I think this is the voucher number I am giving—5759 2 (in a circle) 30B, $150, and voucher 5759 1 (in a circle) 28B, $40. Those are bracketed and entitled Toledo Scale allowances.

"Q. Is that all that's on your working sheet?

"A. Yes, sir.

"Q. Now, those two items, $150 and $40, how did you distribute them as between cylinders and fans?

"A. They were distributed as relating to new cylinder scale sales.

"Q. 30B and 28B, what do you understand the 30B to be, the scale taken in?

"A. Yes, sir.

"Q And the 28B is also the scale taken in?

"A. Yes, sir.

"Q. Well, I don't think then we will spend any time on that item. The next item on page 6 of exhibit 22, "Proceeds of sales of a 2 2nd Hand non-computing scales erroneously credited to Toledo Scale Allowances and now transferred to 2nd Hand Sales", you make an addition of that to the account. Now, it is a total error, is it not?

"A. How do you mean, "a total error?"

"Q. You add that. You are transferring it out of that account.

"A. The original entry was a credit to this account entitled "Toledo Scale Allowances" for the sale of two De Vilbiss scales and this entry was made to relieve the Toledo Scale Accounts and place the credit of those two scales to the 2nd Hand Scale Account.

"Q. Your next item is "Adjustments decreasing book balance—Special Allowances made to customers not involving a return scale erroneously charged to Toledo Scale Allowances and now transferred to Special Allowances $1,505.75." Since it makes no difference to you whether it is in the Toledo Scale Allowance Account or in the Special Allowance Account, we will go on from that.

604 "Now, the next two items are totaled together by the item of $137. I wish you would turn to your working sheet there and tell me the total information on your working sheet in regard to that $97.

"A. $97 relates to voucher No. 2939, April Section 1, which is made up of four items all told, $20.00 on that voucher 2939, April Section 1, 2946, $30.00 and April Section 1, 2678 voucher number, $15.00, July Section 1, voucher No. 5160, $32.00.

"Q. Now, you state there on page 6 of your Exhibit 22 that the $97 and $40 together make an item of $137 and that it is the "amount of price allowances abrogated by reason of possession of new scales on which such allowances were made, not previously written back to the credit of this account as they should have been because of the repossession having been recorded by means of a complete entry which was charged to Charge Backs Account, viz.—in Cylinder Scale Charge Backs $97.00, in Fan Scale Charge Backs $40.00." Now, of course you don't mean to say that on the books there was any such charge as $97.00 to cylinder scale charge backs, do you?

"A. Not on the cash journal and ledger, but the effect of the repossessed scales, the effect of a composite entry in regard to these repossessed scales brings these two items as a debit into the account and this entry is made to relieve that debit.

"Q. Well, the fact about the entry upon the journal carried into the ledger was this: They made there an entry of the difference between the price allowance and the full charge backs charge, didn't they, they made a composite entry?

"A. They made a composite entry, yes.

"Q. Which was a balance?

"A. Which was a balance to the customer's account, yes.

"Q. They were not putting in the Charge Backs Account the whole of that amount as a debit to sales for the reason that there had been a special allowance as a part of the selling price?

"A. Yes.

"Q. Therefore the amounts were put on the books in the form of charge backs, as a charge back in a certain amount after deducting the special allowance?

"A. Yes, sir.

605 "Q. Now, you take and restore the special allowance and then transfer the amount $137 to some account. Now, where do you transfer it?

"A. Page 3 of Defendant's Exhibit 22 you will find where the $97 is part of the item of $15,517.70 which on this exhibit has been added to charge backs.

"Q. It has been added to charge backs?

"A. Yes, sir.

"Q. You said in your last answer that $97 taken out of Toledo Scale Allowances is the same $97 that is put into charges backs on page 3?

"A. Yes, sir.

"Q. Now, will you produce the papers referring to the Toledo Scale Allowance Account which were marked last night as Exhibit 48 and Exhibit 49?

"A. There is the summary. (Handing paper to Mr. Zans.)

"Q. Now, upon your first page of the summary, Toledo Scale Allowances for the year 1911, you have already answered that for the first three months you divided the allowances into allowances upon sales in the year 1911 and allowances upon sales made prior to the year 1911?

"A. Yes, sir.

"Q. You quit that at the beginning of April, 1911, in your account, didn't you?

"A. Yes, sir.

"Q. Now, in those three months up to April 1st the Total Allowances on Sales of Cylinder Scales made in the year 1911 was what?

"A. $1,896.

"Q. And what was the Total Allowances in that Toledo Scale Allowance Account made on cylinder sales prior to 1911?

"A. 1,931.50.

"Q. $1,931.50?

"A. Yes, sir.
"Q. Now, the next sheet in the Toledo Scale Allowance Account—details, is it?
"A. It is a rough working sheet that was used in making calculations.
"Q. And it goes down to what month?
"A. Well, it stopped at November, but I don't know whether that is complete. It is a rough working sheet.
"Q. I know. It stops at November?
"A. Yes.
606 "Q. Your first sheet goes through the year?
"A. Yes sir.
"Q. Now, is this in your handwriting, this sheet which is called Toledo Scale Allowances, Details of Commissions?
"A. No, it is not in my writing.
"Q. That is not in your writing?
"A. No, sir.
"Q. The first column is the month, the second column the day, the third column the voucher, is it not?
"A. Yes, sir.
"Q. The next column is record of scales sold?
"A. Kind of scales sold.
"Q. The next column list price?
"A. Yes, sir.
"Q. The next column is Company's maximum allowance when sold singly?
"A. Yes, sir
"Q. The next two columns have a heading Exchange Allowances?
"A. Yes, sir.
"Q. And divided into two sub-heads, *born* by agents?
"A. Yes, sir.
"Q. I suppose he means borne, borne by agents?
"A. I presume he does, yes.
"Q. And the second hand column is "*born* by company"—apportioned on what?
"A. Basis.
"Q. Of what?
"A. Maximum allowance.
"Q. Oh, apportioned on basis of maximum allowance?
"A. Yes.
"Q. The next column is entitled Net Book Value to Company.
"A. Net Cash Value to Company.
"Q. Oh, Net Cash value to company?
"A. Yes, sir.
"Q. The next column is what?
"A. Theoretical commission, per cent amount.
"Q. Theoretical commission, per cent amount. The next column is entitled Gross Commission actually payable prorated on Theoretical—what's that, basis?
"A. Yes, sir.

"Q. Gross Commission actually pro-rated on Theoretical Basis. There are now four columns with a common heading,
607 "Details of Commissions," then sub-heads, the first sub-head "Old method of charging Exchange Scales"?

"A. Yes, sir.

"Q. And that is divided into two columns below by sub-sub-head "Fan, cylinder," that's true is it not?

"A. Yes, sir.

"Q. The next sub-head under ditto of commissions is "Old method of charging commissions" divided into two sub-sub-heads, "Fan," "Cylinder"?

"A. Yes, sir.

"Q. The next four columns are entitled Exchange Allowances, then sub-head "Old method of charging" divided into fan and cylinder columns, then sub-head "New Method of charging" divided into fan and cylinder columns?

"A. Yes, sir.

"Q. Then the next head is "Commissions" covering four columns, divided into "Old method of charging," divided into sub-sub-heads "Fan" and "Cylinder." Then two columns, "New Method of charging," divided into two columns by sub-sub-heads of "Fan" and "Cylinder." That's the way this is arranged, is it not?

"A. Yes, sir.

"Q. Now, who is the man who wrote this sheet?

"A. I think there were several who worked on that, I am not sure exactly who.

"Q. Is there a single piece of your writing either in figure or anything else on this sheet? Look it over carefully please.

"A. This down here is mine.

"Q. Now the figures——

"A. These adjustments down here, these figures down here. (Indicating.)

"Q. The figures below the general heading "Exchange Allowances and Commissions" divided into eight columns such as I have stated, divided first by four sub-heads into four columns and then by sub-sub-heads into eight columns between fan and cylinder scales. The totals at the bottom are in your figuree, that's what you say?

"A. Yes, sir, that is, these figures down here. Not the total, but such calculations as are shown there. (Indicating.)

"Q. Yes.

"A. Numbering eight in all, represent my writing.

"Q. Yes. Is that "understated" your writing?

"A. Yes.

"Q. And "overstated" is your writing?

608 "A. Yes.

"Q. Where those words occur at the bottom of the page?

"A. Yes.

"Q. And the figures following "understated" are in — writing?

"A. Yes.

"Q. And the figures following "overstated" are in your *your* writing?

"A. Yes, those two are. These are not. (Indicating.) These footings down here are mine and those two figures there. (Indicating.)

"Q. The figures in the vermillion penciling are not yours?

"A. Yes, two of the figures in the vermillion penciling are mine.

"Q. Well, what were you trying to do on that sheet, tell us, just explain what that thing means.

"A. Mr. Seatree will give you the details of that sheet.

"Q. Don't you know?

"A. That was done by the assistants under his direction.

"Q. Well, when you were contributing and using the vermillion pencil and adding up and subtracting and otherwise involving yourself here in figures what were you trying to do?

"A. Simply used those figures that I did make on there in making adjustments.

"Q. Well, how?

"A. By carrying them to their proper account in the drafts of the statements that were to be prepared.

"Q. Well, you had to know what was meant at the top here by "Old method of charging," didn't you, in order to work on this, you had to know that, didn't you?

"A. Why, yes, I presume I did, at the time I did in any case.

"Q. Do you mean to say this thing has passed out of your mind? Don't you know now what "Old method of charging" means?

"A. Yes, I do.

"Q. Well, tell us what it means.

"A. Where the company had sold two kinds of scales, that is to say, a cylinder and a fan scale, and in part payment had taken an old scale in exchange for the sale of these new cylinder and fan scales, they computed the commission on the cylinder scale
609 as though the allowance made on the exchange scale taken in applied entirely to the cylinder scale. That was their method of computing the commissions.

"Q. Now, you reversed that and you instituted a new method of charging, didn't you?

"A. There was a new method instituted, yes, sir.

"Q. And you carried that new method into your account?

"A. Yes, sir.

"Q. And that's the way you swelled the commission account?

"A. No, it is not swelled, the commission account.

"Q. Why, is adds to it, doesn't it?

"A. No, I don't think so; unless I would follow each one of those transactions through, I can't say definitely it would increase or decrease, them, but it is my recollection it decreased commissions chargeable to cylinder scale business, and if I remember correctly, Mr. Seatree pointed it out.

"Q. Well, your proposition, as I understand it, is this, that under the Company's system which it had followed and used and acquiesced in for many years and had carried out by entering upon its books was this method, that if a cylinder and fan scale were sold, the Exchange Scale Allowance made on the two together was a de-

crease from the selling price so far as the computation of commissions was concerned. Then they deducted that allowance for the Exchange Scale wholly from the selling price of the cylinder; after they had done that then they calculated the commissions payable on the cylinder and the fan sale respectively as to the amount of cash upon which alone the commission was computed. Now, that's the truth of what you state, is it not?

"A. Not exactly. When you say——

"Q. When you told us——

"Mr. Meads: Let him finish his answer and then move to strike it out if you don't think it is responsive.

"Mr. Zane: Oh, certainly.

"Mr. Meads: Go ahead.

"A. The allowance is not always applied against the cylinder scale. The allowance is applied, as I understand, against the higher priced scale. The cylinder may at times be the higher priced and then again the fan scale may be the higher priced scale, but as I understand, their practice in the past has been to apply the allowance made on the higher priced scale and have computed the commissions accordingly.

"Q. Did you ascertain that method of computing commis-
610 sions from the books or were you told something about it by somebody?

"A. It is my recollection that I inquired as to that particular phase of the company's business and they assigned——

"Q. I did ask you what was said, but whether or not you got it from somebody.

"A. Nothing was said. A clerk was assigned us whose duty it was I understand to calculate these commissions and he showed one or two of our clerks just how the company regarded the new scales sold where allowances had been made, and it appeared from those tests and from those examples that were given that the company——

"Q. Wait a minute.

"A. —had followed——

"Mr. Zane: I want to object to this. I am not asking for hearsay. He is bringing it in.

"Mr. Meads: You asked him where he got his information and he is telling you.

"Mr. Zane: He is telling what he got.

"The Master: He got information from somebody that was assigned for that purpose. Now, he is going on to say that they made tests which so far as I know may furnish a further means by which he got information. Go ahead.

"Mr. Zane:

"Q. Did you make them yourself?

"A. In one or two instances I perhaps did watch these calculations being made, but I don't recall all the details of them. I re-

member that two of our assistants were assigned with employes of the company to work out these commissions and find out just what the facts were, and it is my recollection that they found that the company's plan and policy had been to compute the commissions as though the exchange scale which had been taken in applied as against the higher priced scale.

"Q. Now the actual fact was this, was it not, in regard to allowances for Toledo Scales taken in, if the price of the new scale purchased by the purchaser is less than the price of the old Toledo Scale to be taken in exchange, the allowance percentage shall be figured on the price of the new scale, and in every case the allowance percentage shall be figured on the lower priced scale in the transaction? You knew that was the rule, didn't you?

"A. I may have been told about that, but I don't think I knew that rule or gave it much consideration.

611 "Q. You didn't consult the price list of the company?

"A. I understand there are several price lists.

"Q. Well, did you consult the price list?

"A. No, I did not as to that particular feature.

"Q. Now, what do the words in regard to exchange allowances mean: "Old method of charging," "New method of charging,"—You have stated something in regard to commissions. Now, what do these words on this sheet mean in regard to exchange allowances?

"A. Well, the company, as I explained in regard to the commissions, had been, or it was their policy, as I understand it, to apply the old scale taken in on new sales made against the higher price of the scale.

"Q. The higher priced scale?

"A. Where two scales were sold, where a fan and cylinder were sold. It appeared or, in other words, Mr. Seatree—that question was taken up with Mr. Seatree and he gave us his opinion that it was unfair.

"Mr. Zane: We object.

"The Master: Objection sustained.

(To the witness:) It was taken up with Mr. Seatree and then what followed?

"A. And Mr. Seatree decided the point as regards the application of those allowances and these sheets were worked out under the direction by the assistants.

"Q. Now, the "Old Method of charging allowances" was the company's method carried into its books?

"A. I presume that is what was meant.

"Q. And the new method of charging was what?

"A. I presume just what it says, a new method adopted by Mr. Seatree.

"Q. Well, how did it differ from the old?

"A. It differed in this way, that where two scales were sold, viz, a fan and a cylinder scale, the one being at one price and the other being at another selling price and an allowance was made, the company—Wait a minute. An allowance was made which according to

the company's prices was to apply; that allowance was made against the higher priced scale. It was assumed that if two scales had been taken in exchange, or the other way, if only one of those scales had been taken in exchange, or rather one scale had been sold and one scale had been taken in exchange, that a certain allowance would apply which the company had authorized their agents to
612 make. Well, the theory was that it was unfair to charge the higher priced scale with that total allowance for the reason that the sale, the allowance was incidental to all the sales so the theory was proceeded on that, as I said before, if the higher priced scale had been sold alone, the allowance would have been one figure, for example say $40, and if the lower priced scale had been sold, why the allowance for example say would be $25 or say $20 on the same scale, so theoretically they could allow as much as $60 on that sale, but they allowed only $40, so that the theoretical allowance which was arrived at, being the sum of the $40 and the $20, $60, it was thought more equitable to distribute that $50 on a basis of the relation of the theoretical allowance, on the basis of the relation that the theoretical allowance bore to the total of the theoretical allowance and that actual allowance that had been made was divided on that basis. Mr. Seatree can explain it more fully than I can because he is the one that worked out the theory and instructed the men.

"Q. Now, the result of this theoretical and fancy figuring is carried into your account, is it?

"A. It is.

"Q. Well, in this accounting that is presented here by you under oath did you consider that you had the right to say the company's judgment was bad in regard to its allowance for commissions and that that method must be reformed by you as a bookkeeper five years or six years after the event?

"A. I personally didn't consider it. I followed the instructions of the superior member of our firm.

"Q. Well, you as an expert bookkeeper would say, would you not, that a bookkeeper or an expert years after the event could not change the company's method of figuring the allowance for exchange scales or figuring the commission upon a sale; you would say that as an expert bookkeeper, would you not?

"A. Well, as an expert bookkeeper I would say that in stating the accounts five years later in a case of this kind I would work along exactly the lines that have been stated in this accounting for the reason that it more equitably distributes the charges in this case by the allowances and the commissions on this method than it would by the company's method.

613 "Q. That is to say, the company had not been equitable enough towards itself, is that what you mean to say?

"Mr. Meads: I object to that question. The witness has not attempted to say that.

"Mr. Zane: He said "more equitable."

"Mr. Meads: The witness has stated it was unfair in this particular case to either one or the other class of scales. The division which

he attempted to make was not towards the company but towards one branch or the other of its business.

"Mr. Zane: He is changing the company's method of figuring commissions. When the company had made the distinction between scales and had figured the exchange allowances and commissions in accordance with its rule, they come in and change it.

"The Master: I will sustain the objection to that question. It is immaterial what he thought about it.

"Mr. Zane: Exception. I was putting this question as an expert for his opinion, that was all.

"The Master: I don't think he is an expert on the question as to what is equitable or inequitable. He is an expert, as I understand it, on the question of stating accounts. Then he has stated exactly what he did and we may draw such inferences from that as we think proper.

"Mr. Zane:

"Q. Now, let me draw your attention to a part that's headed on your working sheet "Toledo Scale Allowances, Debit, Section 1." Under the head of "Fan" you have got the subheads "Current," "Prior," "Future," and under the head of "Cylinder" you have "Current," "Prior," "Future." Drawing your attention now to the entry, Voucher No. 729, simply in the month of February, the date not otherwise marked?

"A. Yes.

"Q. You have there an allowance, Toledo Scale Allowances, of $215.50, is it not?

"A. Yes, sir.

"Q. You have "2" in a circle, does that mean 2 fans?

"A. It mean two scales.

"Q. Two scales sold?

"A. No, not two scales sold, two scales coming back, two scales taken in exchange.

"Q. How many scales were sold?

"A. Well, I don't know unless I would look at the voucher.

614 "Q. The entry is under the head of "Fan, Prior $45.50," is it not?

"A. Yes, sir.

"Q. Then under "Cylinder, Prior" you have the figure 2 in a circle, that means two scales?

"A. Two scales taken in, yes.

"Q. Were there four scales then taken on that one deal?

"A. It appears from that notation there that there were four scales taken in, yes.

"Q. And the allowance on "Cylinders, Prior" is how much?

"A. $170.

"Q. Now, on the company's method of figuring the allowance do you know what it would have there as between fans and cylinders instead of $45.50, allowance to fans, and $170 allowance to cylinders, do you know what would have been the allowance or what was the allowance on the company's book?

"A. I would have to see the voucher and calculate that because of the large number of scales that were taken in and the prices that were allowed on them and examine just exactly how the company did handle it.

"Q. You can't tell from your working sheet?

"A. Well, it is divided on the working sheet as between fan and cylinder.

"Q. Yes, but you cannot tell from your working sheet how on the company's plan that would have been divided?

"A. Not on my working sheet.

"Q. Of course, your working sheet is what you have carried into your account that has been presented to the court?

"A. Yes, sir.

"Q. I want to draw your attention to sheets that are headed "Toledo Scale Allowances Dr." or debit, and ask you if the same man got up the sheets for January, February and March who got them up for the rest of the months. You have one kind of pages for January, February and March, you have another kind of pages for the remaining months of the year. Now, did the same man do the work for the first three months who did the work for the remaining nine months?

"A. Not all of the remaining nine months. You see there were only the three, originally there were two men besides myself here and we worked up as much of the three months as we could and then we found in time to get this accounting so as to be ready for a hearing on the 15th of September, as I understood the date,
615 we would have to work very fast and very hard to do it, and Mr. Seatree came to Toledo at my request and we discussed the work and the time that we had to do the work in and it was then decided that the plan we had originally outlined of dividing the three months' allowances and commissions and these other expense items between what applied on sales made in prior years and what had been made on sales made in current years would have to be abandoned and that in the time allotted that we would have to confine the division of these expense accounts that I mentioned, Toledo Scale Allowances, Exchange Scale Allowances and Commissions, between fan and cylinder business as they were taken up on the books of the company in that year, and that was the reason that in one case, as you mentioned here, that the Prior, Current and Deferred which you mentioned on the first three sheets is not mentioned, that is, on the sheets of the first three months, is not mentioned on the sheets of the last nine months.

"Mr. Zane: I move to strike out his whole answer as not responsive.

"The Master: Objection sustained.

"Mr. Zane:

"Q. Now, just answer about that man.

"A. No, he did not.

"Q. Did you do any of the work, either in the three months or the nine months?

"A. I think I ran the headings out on the first sheet and I don't recall whether I did any of the work on there unless I examine all the pages.

"Q. Well, just hastily glance through.

"A. Yes, I think some of it was done, here and there some of it was done by me.

"Q. Now, this small sheet that is here which reads "3582 Section 3, Exchange Scale, Voucher, $325 Allowance," and so on, in whose handwriting is that?

"A. I don't recognize it right now.

"Q. Is it any of your men?

"A. I can't say.

"Q. The words that are written at the bottom "Charge to Toledo Scale Allowances," in whose handwriting is that?

"A. I can't say whose that is, I don't know what that memorandum relates to at all.

"Q. Is it any of your men?

"A. I don't know, it may be. I presume all of it is. I can't say positively because it is simply a rough memorandum. I
616 don't know what it relates to now. That is, I can't say what it relates to now without looking into the details of it.

"Q. Now, didn't you in the course of your examination simply ask a question of the bookkeeper here or Mr. Zolg and get an answer back from Mr. Zolg as to where a certain thing was to be placed?

"A. Well, to what do you refer, to the entire accounting or to that memorandum or just what?

"Q. No, not referring particularly to this memorandum except as the memorandum is an instance of something. When you found not a sufficient explanation from the books or the vouchers, did you have occasion to refer any inquiries for information to Mr. Zolg?

"A. On some occasions perhaps we did.

"Q. Did you receive—I don't ask you what it was—information from Mr. Zolg?

"A. We have received some information from him.

"Q. Did you act upon that information in making your account?

"A. In some instances perhaps we did.

"Q. On the page I show you of the working sheets the amount "325" under Voucher 3528 followed by the words "Wilkie Mitchell Co.," then followed by the figures "325" under the heading "Undistributed," that 325 scratched out and then the 325 put under the heading of "Cylinder," in whose handwriting are the words "Wilkie Mitchell Co."?

"A. I can't say now.

"Q. Don't you recognize that as being one of your assistants?

"A. Yes, it is one of the assistants.

"Q. Now, which one?

"A. I don't know which one it was, it may have been Mr. Hansen, if I can recall his writing.

"Q. In any of these names written opposite amounts that are writ-

ten in "undistributed" and then erased and put under "Cylinder" does your handwriting appear in any of the names?

"A. I don't know unless I examine it. (Witness examines document.) None of the names appear in my handwriting.

"Q. None of them in your handwriting?

"A. No.

"Q. Now, we will go to the Exchange Scale Allowance Account on page 7 of Exhibit 22. The total of the Exchange Allowances Account to be apportioned as shown is $99,047.24?

"A. Yes, sir.

"Q. You first add $13.50, increasing the book balance?

"A. Yes, sir.

"Q. Because those two items, one of $7 and the other of $6.50, you consider to be erroneously credited to Exchange Scale Allowances?

"A. Yes, sir.

"Q. You add them here to make the two sides equal and take it off?

"A. Yes, sir.

"Q. Now, you have the next item. "Value of Cylinder, Fan and 2nd Hand Scales sold, erroneously credited to Exchange Scale Allowances." You mean erroneously credited on the books?

"A. On the cash journal and ledger.

"Q. Yes. Now the vouchers that we have seen, that have been introduced in evidence here, have all shown where the charges or credits are credited, at the bottom of the voucher is the annotation showing that, have not you noticed that?

"A. Well, in one instance I recall that it did.

"Q. Only one?

"A. In all the vouchers that you called, yes, they did, that's where they appear.

"Q. Now, in these vouchers that refer to these transactions as to the total amount, $6,131, on page 7 of Exhibit 21 made up of three items of $135 Cylinder Scale Sales, $770 Fan Scale Sales, $5,226 2nd Hand Scale Sales, the vouchers in those cases show how the entries were made on the cash journal?

"A. Yes, they show how they should be made on the cash journal.

"Q. The direction was on the voucher?

"A. Yes, but in that case it had not always been followed, as I understood, that the bookkeeper in that section——

"Mr. Zane: I object and move to strike it out, what he understood.

"The Master: Strike it out.

"Mr. Zane:

"Q. Now, in the Exchange Scale Allowances Account this item that I am drawing your attention to, the $135 item, is credited to the cylinder scale sales, is it?

"A. Yes, sir.

"Q. The $770 is credited in this statement heretofore to the fan scale sales?

"A. Yes, sir.

"Q. And the $5,226 hereafter in the account is credited to 2nd Hand Scale Sales.

"A. Yes, sir, page 14.

"Q. Page 14.

"A. It is a part of that $5,246.

"Q. Yes, you have added $20 to that $5,226 and it makes $5,246?

"A. Yes, sir.

"Q. Now, we have already gone over the items of $135 and $770 where they occurred before. Now, have you got the detailed analysis of the $5,226, 2nd Hand scale sales?

"A. Yes, sir. There is the summary on which that appears, you see, deducting that figure there from this (indicating). Now, there is some items picked up elsewhere, but that is the analysis of part of that—that is the analysis.

"Q. That's the analysis?

"A. Yes, here are the details of it.

"Mr. Zane: I will abandon that inquiry for the present.

"Q. If your Exchange Scale Allowance Account is constructed on the same principle of the company's method of figuring and the new method, that's all carried into the Exchange Scale Allowance Account and the reformation of the division of allowance as between cylinders and fans is carried into this account——

"A. Yes, sir.

"Q. —the reformation of the commissions according to the new method as distinguished from the old method, the company's method is carried into this account?

"A. Yes, sir.

"Q. And that is done on which page here? Oh, yes.

"A. That is the summary there (turning to another sheet).

"Q. That is headed, your working sheet is headed with the first column as to months, the next column as to section, the next column as to voucher, the next column as to kind of scale sold, the next column as to list price, the next column as to company's maximum allowance when sold singly the next two columns exchange allowance divided by subheads into two columns, born- by agents, born- by company, and apportioned on basis of maximum allowance. You didn't write that "born-" in there, did you, Mr. Bowman?

619 "A. No, sir.

"Q. The next column is Net cash value to company the next column Theoretical Commission?

"A. Yes, sir, per cent, amount.

"Q. Per cent, amount. The next column Gross Commission actually payable allocated?

"A. Pro-rated.

"Q. Pro-rated on theoretical basis. The next two columns headed: Old method of charging exchange scales, subdivided into two columns, fan and cylinder; the next two columns headed: New method of charging commissions, subdivided into two headings, fan and cylinder. Those are the column headings of the working sheets?

"A. Yes, sir.

"Q. Now, in these Exchange Scale Allowances you followed the same method for three months and then changed as you did on the Toledo Scale Allowances?

"A. Yes, sir.

"Q. Which is your final sheet where results are summed up to be carried into this typewritten account that has been offered in evidence.

"A. As regards which?

"Q. As regards the total Exchange Scale Allowance Account.

"A. (Witness produces large sheet.)

(Large sheet produced by witness marked for identification Plaintiff's Exhibit 52, Nov. 25, 1916, C. B. M., Master.)

"Q. Now, give us your total on that page $102,177.52, the total of your reformed Exchange Scale Allowances.

"A. It has to be——

"Q. Oh, well, the footings are not carried out.

"A. They are taken right up there (indicating). The totals are found on page 51 as you see here and appearing at the bottom of page 7 of Defendant's Exhibit 22.

"Q. This figure? (indicating).

"A. Yes, sir.

"Q. Which is the final of New Cylinder Exchange Scale Allowances, $84,793.27, where have you that on the detail?

"A. That is the combination of these two summaries and such other adjustments as are required on other schedules.

"Q. Well, where is your paper which shows totals that went to make up $84,793.27?

"A. You will have to pick them up from four or five schedules, four or five different kinds of schedules in the papers.

620 "Q. Now, drawing your attention to this final summary sheet of yours, you first have on here 'New Cylinders as adjusted $86,977.12,' have you not?

"A. Yes.

"Q. Now, you make deductions from that, the total of two items, $599.35 and $1,584.50, making that total of $84,793.27. Now, where is your figure $86,977.12 which you had first?

"A. It appears on a summary of the detail working sheets, that is a grand summary of the summaries of detail working sheets.

"Q. Now, show us the summary of the detail working sheets with that amount added up and ascertained?

"A. It appears on a rough summary of the summaries of analy-es of the various accounts marked 'Year 1911—and there is the figure (indicating).

"Q. Mr. Bowman, I direct your attention to the detailed analysis of the Toledo Scale Allowances Account on page 8 of Defendant's Exhibit 22. The amount that you find in the account to be distributed under your detailed analysis is $27,618.72.

"A. Yes, sir.

"Q. The cash journal and the general ledger showed the amount of that account to be $29,051.47 as Marwick, Mitchell & Company had it?

"A. Yes, sir.

"Q. The main difference which you make from those books is by a certain deduction of $1,505.75 which are adjustments which you have transferred to the special allowance account?

"A. Yes, sir.

"Q. Now, in making the detailed analysis, did you specifically apply each allowance for a Toledo Scale against a specific sale?

"A. No.

"Q. Did you apply the amount of $23,631.03, which is the amount you find specifically chargeable to cylinder scale business to particular specific sales of cylinder scales?

"A. No. It was charged to cylinder scale business as distinct from fan business.

"Q. By what means did you find the specific amounts of the Toledo Scale Allowance Account which was chargeable to the cylinder scale business?

"A. By, I think it was, an analysis, an abstract of Marwick, Mitchell & Company's working papers supplemented by an examination of the vouchers.

621 "Q. Now, when you referred to a voucher did you find that the voucher referred to a specific sale?

"A. Well, it referred to a specific sale, of course, and the sale may or may not have been taken up on the books at the time this allowance was made.

"Q. What do you mean by 'sale may or may not have been taken up on the books'?

"A. There are time as I have noticed through the examination of the vouchers that the allowance both as regards Toledo Scales or what is known as Toledo Scale Allowance, Exchange Scale Allowance and Special Allowances are taken up often in advance of the actual sale being taken up on the books, sometimes it is subsequent.

"Q. Well, that is, you mean to say that the entry of the allowance is not made at the same date as the entry of the sale to which it refers?

"A. Quite so.

"Q. Then, how do you allocate, to use your words, the allowance to a specific sale by means of that voucher?

"A. We did not attempt to allocate it against a specific sale. We simply took the account and analyzed it in the case of those three accounts between the cylinder business and the fan business.

"Q. Where did you get your information as to that particular allowance being applicable to cylinder business or fan business, where did you get that information?

"A. It is my recollection that the papers of Marwick, Mitchel & Company divided the allowances between cylinder and fan business and there were some items which were not distributed, and it is also my recollection that one of my assistants who was assigned to go into the special allowances took those that had not been distributed by Marwick, Mitchell & Company and distributed them.

"Q. Didn't you find from Marwick, Mitchell & Company's papers that they had divided the Toledo Allowance Account on a percentage as to sales?

"A. They do in their account. I am speaking, when I say 'their papers,' of their working papers.

"Q. Now, your recollection is by their working papers you found the Toledo Allowance Account divided between fans and cylinders.

"A. Fan and cylinder business. Yes, sir.

"Q. Did you find it divided as between fan, cylinder and 2nd hand scales?

622 "A. There may have been some 2nd hand, I am not certain as to that.

"Q. You don't remember as to that?

"A. My recollection is there were some 2nd hand scales.

"Q. Now, what additional information did you add to what you got from Marwick, Mitchell & Company's papers?

"A. Well, as I stated before, it was my recollection that in cases where they had not allocated or distributed special allowances or Toledo Scale allowances—Are we talking of Toledo Scale Allowances?

"Q. Always.

"A. Well, I have reference to special allowances. It is Toledo Scale allowances that we made an analysis of by taking the account of the cash journal and the ledger and actually referring back to the vouchers——

"Q. In every case?

"A. —and accounts receivable of those customers in the ledger.

"Q. And you did that in every case?

"Q. In every case that the supporting documents could be found. There were some, of course, that could not be found.

"Q. And that's on the same amount there of unallocated items?

"A. Yes, sir.

"Q. But all the rest of it you referred to special vouchers and thereby to specific sales?

"A. Not to specific sales. As I said, in some cases reference was made to the voucher. When I say, 'voucher,' I mean by that a copy or a carbon copy of the customer's account. Sometimes it was by reference to the customer's account, other times it was by reference, if I recollect correctly, to shipping department notices or receiving department notices.

"Q. Now, you do not mean to say then that in the Toledo Allowance Account Marwick, Mitchell & Company's papers had distributed that account specifically between cylinders and fans?

"A. No, not as an account. I was in error when I spoke of that, I meant the special allowances.

"Q. Well, now, refer to your summary and working papers of the Toledo Scale Allowance Account for this year and let us have the papers that have been marked for identification Exhibits 48

623 and 49. I don't see any Exhibit 48 here?

"A. (Witness produces Exhibit 48.)

"Q. In your working sheet in the month of April you have an

allowance of $825.00 in the Toledo Scale Allowance debits, have you not?

"A. Yes, sir.

"Q. It is preceded by the number "11" in red pencil in a circle. What does the "11" mean?

"A. 11 scales.

"Q. Now tell us how you allocated that item, what you found and where you found it?

"A. Whichever assistant distributed this or allocated it referred to the account of the ledger which this is an abstract of and from thence to the combination cash journal and from thence to the voucher file of Section 3, April voucher #2100 and in examining such documents supporting this entry he allocated it to cylinder scale business and marked it "1910," which indicates that the sale probably was made in 1910.

"Q. Now, this is Section 3 and the voucher number is 2100?

"A. Yes, sir.

"Q. The entry in the Toledo Scale Allowance Account was made on what books first?

"A. It was made on the combination cash journal first.

"Q. And where did you find it first?

"A. You mean the entry of it?

"Q. Yes. In the ledger account?

"A. In the ledger account, Toledo Scale——

"Q. Allowance Account?

"A. Yes.

"Q. Now, will you refer to that entry that you found on the cash journal $825, Toledo Scale Allowance Account?

"A. Voucher #2100.

"Q. Voucher #2100, Section 3.

"A. Yes. Here it is (indicating on page 1).

"Q. Now, what is the entry you find there?

"A. With reference to this particular item which you mentioned there is an entry in the combination cash journal in Section 3 of April, 1911 under the debit side of the general ledger column, $983.25, and the item you refer to on those working papers is a part of that amount.

"Q. Now, where did you go to from this entry?

624 "A. To the vouchers, so-called vouchers.

"Q. Had you seen this entry in the ledger, Toledo Scale Allowance Account, before you saw it here? The original place you saw it was in the ledger was it not?

"A. In the ledger account, yes.

"Q. Can you turn to it in the ledger?

"A. It is posted in an item $2,864.50 on the debit side of page 98, Toledo Scales Allowances.

"Q. And that entry is under date of April 29th on the debit side of the Toledo Scales Allowances Account, $2,864.50?

"A. Yes, sir.

"Q. That is a total made up from the cash journal, is it?

"A. A total made up from that column in the cash journal.

"Q. Yes. And that column in the cash journal which you refer to is——

"A. General ledger column.

"Q. And is on the debit side of the general ledger column in the cash journal?

"A. Yes, sir.

"Q. And is marked in the column Descriptive "Toledo Scale Allowance?"

"A. Yes, sir.

"Q. Now, from the cash journal you went to voucher 2100, Section 3 for the month of April, 1911, did you?

"A. Yes, sir.

Mr. Zane: Will you let us have that voucher?

(Package of vouchers produced by Mr. Zolg.)

"A. (Witness indicates voucher 2100.)

"Q. Now, on the voucher which you have referred to—Is this the whole voucher, are there any accompanying papers with this voucher?

"A. There are.

"Q. Where are they?

"A. Attached thereto, following it.

"Mr. Meads: How many?

"A. There are 43 papers.

"Mr. Zane:

"Q. Now, the total amount of that voucher for Toledo Scale Allowances is $983.25?

"A. Yes, sir.

"Q. That is the amount on the cash journal, is it?

"A. Yes, sir.

"Q. Now, what is the first paper in this voucher referring to Toledo Scale Allowances?

"A. The first one is the paper which is marked:

625 "Toledo Computing Scale Co.

Toledo, Ohio, 4-14, 1911.

Received this day via Wab. Railroad the following articles from Messrs. W. D. Williams & Co. marked:

Point of shipment, Minelo Tex.
Order No. —.
Quantity Received, 1 Box.
Rejected —.
Put into Stock —.
Remarks Regarding Rejects. ——.
1-51 Blue 30967.
Broken Platter.
Broken Reflector.
2474.

This ship to be returned to Stock Room.
Received by A. G. S.
(Endorsed on this paper in red ink is following: "T. C. S. Allow 33.25."
(Endorsed in pencil:) "Freight $208."
(Another endorsement in pencil:) "C/10."

"Q. Now, that does not refer to the $825 item in the Toledo Scale Allowances, does it?
"A. No. I don't think that part does.
"Q. Not that part of the voucher, find the particular part of the voucher that refers to the $825 item?
"A. The $825 is shown on:

'Exchange Scale Credit Memorandum.

Account of Fred Wolferman, K. C., Mo.
Amount of Allowance, $75 each.

Style 348 whites { 48485, 48490, 49996, 49851, 49989, 48487, 42426, 49996 } 345 White { 42396, 42385, 42419 }

Charge to K. C. Ofs. at $75.00 each.
Date, 4/20/11.
48490 Resold to D. F. Tarbeth, Sedalia, Mo., at $75.00.

TOLEDO COMPUTING SCALE COMPANY,
By E. E. W., *Collection Department.*

626 (Endorsed across the face of memorandum in red ink:) "F. S. Allow 825."
(In pencil on face of memorandum:) "C/10."
The second memorandum:

Toledo Computing Scale Co.

Consignment Delivery Memorandum.

Delivered to K. C. Office.
Address, ——.
Date of order, ——, —, 19—.
Date Delivered, 4-3, 1911.
Stock Delivered 348 White—48485)
348 " —48490)
348 " —49996)
348 " —49881)
From FRED WOLFERMAN,
K. C. Office Sales Agent.

NOTE.—When a delivery has been made to a customer or a transfer of any stock made to another agent fill the particulars in on this form amd send it in at once to insure prompt credit on your consignment credit.

(Stamp on face of memorandum:) "Apr. 6, 1911. C. S. N."

"Toledo Computing Scale Co.

Consignment Delivery Memorandum.

Delivered to K. C. Office.
Address, ——.
Date of Order, —— —, 191–.
Date Delivered, 4-3, 1911.
Stock Delivered 348 White—49989)
345 " —42396)
345 " —42395)

From

FRED WOLFERMAN,
K. C. Office Sales Agent.

NOTE.—When a delivery has been made to a customer or a transfer of any stock made to another agent fill the particulars in on this form and send it in at once to insure prompt credit on your consignment credit.

(Stamp on face of memorandum:) "Apr. 6, 1911. C. S. N.' "

627 Also:

Toledo Computing Scale Co.

Consignment Delivery Memorandum.

Delivered to K. C. Office.
Address, ——.
Date of Order, —— —, 191-.
Date Delivered, 4-3, 1911.
Stock Delivered: 348 White—48487.
345 " —42419)
348 " —42426)
348 " —49990)

From

FRED WOLFERMAN,
K. C. Office Sales Agent.

NOTE.—When a delivery has been made to a customer or a transfer of any stock made to another agent fill the particulars in on this form and send it in at ance to insure prompt credit on your consignment credit.

(Stamp on face of memorandum:) 'Apr. 6, 1911. C. S. N.' "

"Q. Now, do you find any other papers referring to the $825 item there?

"A. No, I think not

"Q. Where did you go to from that voucher in order to specifically allocate that exchange?

"A. It is my recollection that reference was probably made to the customer's account.

"Q. Now, how many Toledo Scales were received there in exchange?

"A. 11.

"Q. Now, the customer's account is Fred Wolferman, Kansas City?

"A. Apparently. I am not certain about it.

"Q. Yes. Can you tell the date of the sale from that voucher there?

"A. There is a pencil memorandum on here marked "C/10", which, I believe indicates the year in which the sale was made, the original sale was made

"Q. Do you know whose notation "C/10" is on there?

"A. I do not.

"Q. Now, what do your working papers show that you ascertained in regard to this sale.

"A. That there were 11 Toledo scales taken in exchange
628 on new scales made upon which an allowance of $825 was made.

"Q. Do you find the name of the customer on your working sheets?

"A. No, sir.

"Q. Do you find the date of the sale?

"A. No, sir.

"Q. How are you able to identify the date, 1910?

"A. Well, that is the year. I don't know as to the exact date. The sale was made sometime in 1910.

"Q. Well, have you got that on your working sheet?

"A. Yes. There is a "1910" with a circle around it which indicates that the sale was made in 1910.

"Q. Now, was that the total allowance on that sale, do your working sheets indicate?

"A. Well, I can't say as to the original sale. This $825 indicates that allowances were made on those sales. It may have been on a sale or sales, I am not certain as to that.

"Q. But where on your working sheets is there any notation from the sale showing that the original sale was of cylinder scales, have you got any such thing on your working sheets?

"A. Nothing except the working paper which you see.

"Q. Well, have you got anything on your working sheets noting a sale of cylinder scales?

"A. Yes.

"Q. Beyond the entry under the cylinder column?

"A. Nothing further.

"Q. There is no entry there of what information was obtained from Fred Wolferman's account?
"A. No, sir.

"Mr. Zane: Now, Mr. Zolg, will you find us that customer's account which you call the customer's ledger?
"Mr. Zolg: That in the W's—Wolferman.
"Mr. Zane: And it must be 1920.

(Mr. Zolg produces bound volume.)

"Q. Now, the customer's account which is a duplicate of the original, is it?
"A. Yes, sir.
"Q. Has been produced?
"A. Yes, sir.
"Q. That shows what?
"A. That there was an allowance of $825 made for the 11 Toledo Scales taken in exchange on a new scale made in 1910 to Fred Wolferman & Company of 15 cylinder scales.
629 "Q. You say that shows an allowance for 11 Toledo scales taken in exchange?
"A. No. It shows an allowance of $825 on 11 Toledo scales taken in exchange on the sale of 15 scales.
"Q. Now this document reads, does it not:

TOLEDO COMPUTING SCALE CO.

630 Order Dated 9/24. Received 9/30. Entered 11/25.

Toledo, Ohio, U. S. A.

Sold to Fred Wolferman & Co.
1108-1110 Walnut St.
Kansas City, Mo.
Jackson Co.

Date shipped
Sales Agent.

Sales Ledger 12/17/10.

Dun Rating Bradstreet. D 1 ½
Collect Through Kansas City Office.

Shipped Via Freight Wabash.

Terms (F. O. B. Toledo).
$1,125 Allow. for fifteen (15) Toledo Scales—1,150 Allow. for Adv.
Bal. Cash (net) 30 days after Del.

L. S. Miller.
J. Doriot.

When to Ship.
Order No. 34320.

Rush S.

Commission.	Quantity.	Style.	Finish.	Factory No.	Special.	Amount.
	1	383	Gold	85303	Chart D Plain Brass Trimmings	$175.00
	1	383	Gold	85308	" " " " "	175.00
	1	383	Gold	85310	" " " " "	175.00
109G—60247)	1	383	Gold	38312	" " " " "	175.00
405G—91376)	1	383	Gold	85306	" " " " "	175.00
212G—38804)	1	383	Gold	85316	" " " " "	175.00
228G—67655)	1	383	Gold	85311	" " " " "	175.00
	1	387	Gold	85330	" " " " "	175.00
	1	387	Gold	85335	" " " " "	175.00
Date of Credit	1	383	Gold	85283	" " " " "	175.00
	1	383	Gold	85289	" " " " "	175.00
Date of	1	383	Gold	85287	" " " " "	175.00
Charge Back	1	383	Gold	85344	" " " " "	175.00
	1	383	Gold	85281	" " " " "	175.00
	1	383	Gold	85345	" " " " "	175.00
						$2,625.00

Charges			
	Balance	350	Cr. by Adv. Allow. 1,150.00
	Cash	250	
	Bal. Due	100	Bal. Due 1,475.00

Date of Charges	Electric Connections through bottom of base.

Endorsed on face of document as follows:

Dec. 16, 1911	Checked by C. K.
— — —	— — —
Nov. 30, 1910.	Cancelled Apr. 23, 1912. Toledo Computing Scale Co. Per————
— — —	
17571	
— — —	
18029	

Cr. by Ex. Scale April 20, 1911	825.00
Bal. Due	650.00
Cr. by Ex. Scale Dec	300.00
Bal. Due)	350.00
Bal. For'd)	.....

631 "Q. Don't you see that's an allowance for 15 Toledo scales taken in exchange?

"A. So it says there.

"Q. Now, what does this mean here on the side, "even exchange 1090—60247, 405G—91376, 212G—38804, 228G—67655." What does that mean?

"A. I don't know anything further than what it says there.

"Q. Now, you see stamped on the face of that "Cancelled April 23, 1912, Toledo Computing Scale Co.?"

"A. Well, I would have to refer to the entry made in 1912 to analyze what that means, but I imagine it means that the sale fell through in 1912.

"Q. Now, you have here the total for the selling price of the scales sold $2,625 have you not?

"A. Yes, sir.

"Q. Cr. by Adv. Allow., what does that mean?

"A. Advertising.

"Q. $1,150?

"A. Yes, sir.

"Q. Now you have added below that in red ink $825, then a subtraction from $1,475, $650; then you have an amount of $300 and a subtraction below that, $350 as balance which you add. "Balance forward" that is it, is it not?

"A. I think it is. No "Balance forward" must be another account.

"Q. It says "Balance forward $350."

"A. Well, there must be another ledger sheet there.

"Q. Well, you say on the same sheet "Balance $350."

"A. Well, it is probably carried on another sheet.

"Q. "Balance $350, cash, $250, Balance Due $100"?

"A. Yes, sir.

"Q. So that the sale as made was for 15 Toledo scales, allowed against which was an amount of $1,125 for 15 Toledo scales taken in exchange and $1,150 allowed for advertising?

"A. Yes, sir.

"Q. Now, did you look to see what was the amount credited to sales at the time of that sale?

"A. I presume this document was seen. I don't know as there was any reference made to the sales at the time it was made. We were concerned only with that item of $825.

"Q. In the natural course of book entries the amount credited to sales would be $2,625 at the date of the sale of 1910, would it not?

"A. Yes, that would be the natural course.

632 "Q. Yes. Then the Advertising Account would be debited $1,150, would it not?

"A. It should be, yes.

"Q. The Toledo Scale Allowances would be debited $825?

"A. Well, not at the time the sale was made because the scales had not come in.

"Q. That would not be done until the scales came in?

"A. No. The scales would have to come in or go to the distributing points as I understand it.

"Q. And the scales didn't come in here until April, 1911?
"A. Yes, I think it was, according to that document.
"Q. Now, can you tell from this entry here how much cash actually passed?
"A. Not on the combined entries, the combined sales, how much cash passed. Not without going right back to the initial sale.
"Q. Do you find any other allowances on that account in your detailed analysis for 1911 for Toledo exchanges?
"A. There is an allowance here of $300 marked "Credit by exchange scales." It is a rubber stamp, and I can't make out the date here, $300 in any case.
"Q. You can find that on your detailed analysis, can't you?
"A. If it came in in 1911 it is included in there.
"Q. Well, does not the date show there?
"A. I can't make out the date, you see. You see that has been very much blurred from constantly handling this over here.

"(Mr. Zane examines sheet referred to by the witness).

"Q. Can you tell in your detailed analysis in November, 1911 what the four entries of $75 each totalling $300 marked "1910" in the Toledo Scale Allowance for cylinders refers to?
"A. I can if reference can be made to the vouchers.
"Q. Well, the voucher number is 7803, Section 3, is it not?
"A. Yes, sir.
"Q. November, 1911?
"A. Yes, sir.

"Mr. Zane: Voucher 7803, Section 3, November 1911.

"(Package of vouchers produced by Mr. Zolg).

"Q. Now, have you the voucher there?
"A. Yes. (Indicating voucher 7803.)
"Q. And the voucher refers to Toledo Scale allowances, $520?
633 "A. Yes.
"Q. Turn to the part of the voucher that refers to the $300 of $75 for each?
"A. (Witness indicates part of voucher.)
"Q. Now, the part of the voucher you refer to, just read it, will you?
"A. It is:

"Exchange Scale Credit Memorandum.

"Account of Fred Wolferman, K. C. Mo.
"Amount of Allowance 75.00. C-10.
"Style 12 Green 29827.
"Charge to K. C. Ofs. at 75.00.
"Date 11-27-11.

"TOLEDO COMPUTING SCALE COMPANY,
"By E. E. W., *Collection Department.*

"(On face of document in red ink:) F. S. Allow 300.00.'"

"There is a voucher or document reporting that marked:

"Toledo Computing Scale Co.

"*Consignment Charge Memo.*

"Original.
"Date, Nov. 21, 1911.
"We report possession of the following stock:
"Style 12 Color G Factory No. 29827.
"Miscellaneous (Stands, etc.).
"Exchanged —— —, ——. Name: Fred W. Wolferman Co.
"Order Date, —— —, ——. Address: Kansas City, Mo.
"Will keep on consignment Yes.
"Will ship to factory No.
"Remarks: ——. Credit on account.
"Office: K. C. Office.

"L. E. M.

"Do not report more than one item on each memo."

The next is:

"*Exchange Scale Credit Memorandum.*

"Account of Fred Wolferman & Co. K. C. Mo.
"Amount of allowance, 75.00 C-10.
"Style 12 Gold 29794.
"Charge to K. C. Office at 75.00.
"Date 11/10/11.

"TOLEDO COMPUTING SCALE CO.,
"By E. E. W.,
"*Collection Department.*"

634 "That memorandum is supported by a document marked:

"Toledo Computing Scale Co.

"*Consignment Charge Memo.*

"Dete, 11-7, 1911.

"We report possession of the following stock:
"Style 12 Color Gold Factory No. 29794.
"Miscellaneous (Stands, etc.).
"Exchanged: —— —, ——. Name: Fred Wolferman Co.
"Order Date, 9-29-10. Address: K. C. Mo.
"Will keep on consignment? Yes.
"Will ship to factory? —.
"Remarks: Credit on account.
"Office: Kansas City.
"Do not report more than one item on each memo."

"The next is an Exchange Sale Credit Memorandum:

"Exchange Scale Credit Memorandum.

"Account of Fred Wolferman.
"Amount of Allowance, 70.00 C-10.
"Style 348 White 49881.
"Charge to —— ——. 75.00. Kansas City Office.
"Date, 10/24/11.

"TOLEDO COMPUTING SCALE COMPANY,
"By —— ——,
"Collection Department.

"Per K. C. Consg. Stmt. 10/1/11."

"The next one is:

"Exchange Scale Credit Memorandum.

"Account of Fred Wolferman Co. K. C. Mo.
"Amount of Allowance 75.00 C/10.
"Style, 345 White 42432.
"Charge to K. C. Ofs. at 75.00.
"Date, 8/28/11.

"TOLEDO COMPUTING SCALE COMPANY,
"By E. E. W.,
"Collection Department."

635 "That document is supported by another one marked:

"Toledo Computing Scale Co.

"Consignment Delivery Memorandum.

"Delivered to K. C. Office.
"Address: —— ——.
"Date of Order, —— —, 191–. Date Delivered, 7-10, 1911.
"Stock Delivered, 345 White 42432.
"Exchange scale.
"From

FRED WOLFERMAN CO.,
K. C. Office Sales Agent.

"NOTE.—When a delivery has been made to a customer or a transfer of any stock made to another agent fill the particulars in on this form and send it in at once to insure prompt credit on your consignment account.

"(Pencil memo on document as follows:) '3 more to come.'"

"Q. Now find the others?
"A. Those are the three or four rather.
"Q. There are only three there?
"A. That's all there are, three, is it not?
"Q. Now, that $300 was credited on Toledo Scale Allowance Account for 1911 on the journal under what date?
"A. It was charged——
"Q. Charged I mean.
"A. —to Toledo Scale Allowance Account in November, 1911.
"Q. Well, find the entry on the cash journal.
"A. November 28 (indicating).
"Q. November 28, 1911?
"A. 1911.
"Q. What is the entry?
"A. It is included in the item of $520 in the general ledger column of the cash journal, the descriptive column, being marked Toledo Scale Allowance.
"Q. And in the debit of the general ledger?
"A. Yes, sir.
"Q. $520?
"A. Yes, sir.
"Q. Corresponding to that total of the voucher?
"A. Yes, sir.
"Q. Now that Advertising Allowance of $1,150, did you find when that was debited to the Advertising Account?
636 "A. No, not unless it came through 1911.
"Q. Yes?
"A. We didn't trace it back from the account but from the ledger back to the voucher.

"Mr. Zane: Now, Mr. Zolg, will you let us have the general ledger of 1910 or rather it had better be the cash journal for 1910 that will carry the date of November 30, 1910, or cash and combined journal.

(Mr. Zolg produces cash journal.)

"Q. Find, if you please, that $1,150 for advertising November 30, 1910.

"The Witness: Where would Section 3 be found in this, Mr. Zolg, Section 3, November 1910?

(Mr. Zolg examines books.)

"Mr. Zane (to Mr. Zolg): You find that advertising debit.

(Mr. Zolg examines books further, confers with Mr. Zane and then leaves room for additional vouchers.)

"Q. Now, Mr. Bowman, you have then in the year 1911 on this one transaction, Toledo Scale Allowances, debited in a total of $1,125 against a sale that was made in 1910?
"A. Yes, sir.

"Q. And a sale which was afterwards marked cancelled on the voucher, cancelled "April 23, 1912?"

"A. Yes, sir.

"Q. And in making up your entry for 1911 you did not take this total allowance of $1,125 and charge it against the sales of 1910 but did charge it against the sales of 1911?

"A. Against the business, yes, the sales, the cylinder business of 1911.

"Q. Well, the cylinder business came from cylinder sales didn't it?

"A. Yes, sir.

"Q. So you, in fact, charged it against the cylinder sales of 1911?

"A. Yes.

"Q. Now, in your detailed analysis and summary you have in the last column on your detailed analysis a description in some instances of a scale. What does that mean? (indicating on summary).

"A. That means that in some instances Special Allowances were inadvertently charged into Toledo Scale Allowances; in other words, an allowance was made and charged to this Toledo Scale
637 Allowance Account not involving the return of an exchange scale.

"Q. Now where is your sheet that takes the result of these detailed sheets and summarizes them, carries them into figures that are found at the bottom of page 6 of Defendant's Exhibit 22, where is that sheet that carries these detailed amounts into those figures.

"A. Here it is, here is the summary.

"Q. That's where the totals from your detail sheets are carried into the figures which you put at the bottom of page 6 of Defendant's Exhibit 22?

"A. Yes, sir.

"Q. Now, you have in your detail sheets many instances of the same kind of transactions where as this one that has been gone into in detail the sale was made in 1910 and the allowances are made in 1911.

"A. Yes, sir. And also as to sales made in 1911 when the scale was not returned and the credit made until 1912.

"Mr. Zane: We move to strike out the last part of his answer as not responsive.

"The Master: It may be stricken.

(Mr. Zolg produces two packages of vouchers.)

"Mr. Zane:

"Q. Now the voucher has been produced, voucher dated December 28, 1910, which is headed at the top so far as the credit is concerned, "Credit sales $6,030.00." Now below that is found under the head of Mr. Wolferman & Co., Kansas City, Mo. $2,625.00"; that's on the voucher.

"A. Yes, sir.

"Q. That shows then on that date, December 28, 1910, $2,625.00

was credited to sales on account of the sale to F. Wolferman & Company of Kansas City, Mo.?

"A. Yes, sir.

"Q. What do you understand these figures in pencil to mean? (Indicating.)

A. I think they mean 13 No. 383G and 2 No. 387G scales. That "G" I think means Gold. I am not sure, it may be Gold or Green.

"Q. It may be Gold or Green?

"A. Yes.

"Q. Now, that sale then of $2,625.00 is a part of the total of $6,030.00 on the sales journal, the general combination journal under date of December 20, 1910, in the credit column of sales.

"A. Yes, sir.

638 Q. The voucher No. 1757, November 30, 1910 is the voucher upon which the entry of $1,150 debited to advertising is entered on the general journal?

"A. It appears to be.

"Q. The voucher itself is simply a carbon copy of a part of the pined invoice or customer's page in the sales ledger?

"A. Yes.

"Q. It is simply a white sheet that only carried a carbon of the typewriting on that sheet but does not carry the printed matter on that sheet?

"A. Yes, sir, that's true.

"Mr. Zane: Now, Mr. Zolg, can you get the voucher 2300 Section 3, in the month of April, 1911?

"Mr. Zolg: I have it here (produces package of vouchers).

"Mr. Zolg:

"Q. Will you turn to voucher 2300?

"A. (Witness turnes to voucher 2300.)

"Q. That voucher shows a total debit Toledo Scale Allowances $277.25?

"A. Yes.

"Q. Now, where is the detail for that total of $277.25?

"A. It is made up of three items, $152.75, $44.50 and $80.00.

"Q. Now the first page is an Exchange Scale Credit memorandum of the same general style as the one heretofore stated by you and is an Exchange Scale Credit memorandum of R. E. Trabo, Carthage, Texas, amount of allowance $152.75 for style 346 Gold 66,187. Charge to Theodore Booth at $152.75.

"Q. What do you understand "Charge to Theodore Booth at $152.75" to mean?

"A. I think it means that Theodore Booth is an agent and they are charging him with that scale on his consigned account.

"Q. Now the date of this voucher is what?

"A. April 26, 1911.

"Q. Yes.

"A. April 26, 1911.

"Q. Now this transaction, the sale transaction, upon which that allowance was made was in 1910, was it not?

"A. Yes, sir.
"Q. How do you tell that from this voucher?
"A. There is a pencil notation there "C/10" meaning cylinder sale 1910.
639 "Q. You followed those pencil notations wherever you saw them?
"A. I presume they were followed.
"Q. The next voucher, 4450 is a Credit Memorandum?
"A. Exchange Scale Credit.
"Q. Exchange Scale Credit account of J. S. Peoples, Stony Point, California. Amount of allowance $44.50. No date at all, and then follows "Charge to Frisco at $21.25." Do you know what that means?
"A. I presume that that means that that scale was charged to the Frisco Consigned Stock Account at $21.25.
"Q. Now your next part of that voucher is Exchange Scale Credit Memorandumm. Account of E. C. Buelke, St. Paul. Amount of allowance $80.00. Style 345 Blue 44,522. Charge to Minneapolis Office $70.00. Date April 18, 1911. See Minneapolis Letter 4/18/11. Now, you see there is no notation on there showing whether that's an allowance against a cylinder or a fan sale?
"A. Yes, sir.
"Q. How did you find that it was a cylinder sale?
"A. By reference to those pink copies of the customer's account.
"Q. Of E. C. Buelke?
"A. Yes, of his account which may have been misfiled or his name may have been misspelled or something like that.
"Q. Do you know that you actually referred to E. C. Buelke's account?
"A. Yes, sir.
"Q.What is the voucher number?
"A. I do not know.
"Q. Well, where does your detailed analysis show the voucher number?
"A. The reference was made to the account. If you will note here in the Undistributed column in going through here there they could not find by easy reference the kind of scale, that is to say, how it should be allocated, they made reference in here, giving the man's name from whom the scale came back and put the amount in Undistributed then began the search through these customers' ledgers carefully, where in this case it may have been misfiled or misplaced in some way.
"Q. The easy notation was the one, "C/10" upon the page.
"A. Yes.
"Q. That showed to you it was a cylinder of 1910?
640 "A. Yes, sir.
"Q. When you didn't have that mark and you went to the account where on your detail sheet did you enter the information that the sale was of a cylinder scale?
"A. It was stricken out of Undistributed and placed in either Fan or Cylinder, as the case may have been upon reference to the particular document.

"Q. But this is how you found the voucher number of the account of Buelke's sale so as to show whether it was a cylinder or a fan?

"A. No, I would have to refer back to his account, find the pink slip.

"Q. Now, you have already stated that where allowances were made on a purchase of scales that consisted of fans and cylinders the allowance was made against the cylinders and the commission was allowed by the company upon the amount of the cylinder sale less the allowance so far as the cylinder was concerned and then you redistributed the commission on a more equitable basis. Did you redistribute the allowance accounts on that more equitable basis?

"A. Yes, sir.

"Q. Where is your sheet showing this Toledo Scale Allowance Account redistributed on your self-styled equitable basis?

"A. (Witness produces sheet.)

"Q. Now that equitable redistribution is found in the columns headed what, how do you find your redistribution on that sheet?

"A. The first column is the month, the next column is the section, the next column shows the voucher number, the next column shows the kind of scale sold, the next column shows the list price at which the scales were sold, the next is the company's maximum allowance when sold singly, the next two columns over which the words "Exchange Allowance" appear and under the first of those two columns is the heading "Borne by Agent," the next column "Borne by the Company," and "Apportioned on basis of maximum allowance," the next column is "Net cash value to the Company."

"Q. There are other columns in here?

"A. Yes.

"Q. But we are not concerned with them now. Now, this sheet was brought into operation wherever you had a transaction of a sale of a cylinder and a fan together in redistributing both the commission and the allowance?

611 "A. Yes, where the allowance was a Toledo Scale allowance.

"Q. Now, did you carry into your figures put on page 6 of Exhibit 22 of the Defendant the result of your redistribution of the Toledo Scale Allowance Account as between cylinders and fans on what you call a more equitable basis?

"A. Yes, sir.

"Q. Turn now to page 7 of Defendant's Exhibit 22?

"A. (Witness turns to page 7.)

"Q. The total Exchange Scale Allowance Account as per the books is $99,047.24?

"Mr. Meads: I object unless he specifies what book.

"Mr. Zane: I am reading what is stated on the page, 'Exchange Scale Allowances as per books $99,047.24.'

"A. As shown by the ledger and the combination cash journal.

"Q. Well, that is what you have entered on that page 7 of Defendant's Exhibit 22, what I read to you?

"A. Yes, sir, that's the balance of that account on the general ledger.

"Q. The words 'As per books' are there, are they not?

"A. Yes, sir, they are on this Exhibit.

"Q. Now, you add to that account that is found on the books a sum of $6,131.00, do you not?

"A. Yes, sir.

"Q. That sum of $6,131.00 is made up of what you state to be the Value of cylinder, fan and 2nd hand scales sold, erroneously credited to Exchange Scale Allowances, thereby understating both the gross sales and Exchange Scale Allowances.' Now the amount of cylinder scale sales is $135.00 in that total, is it not?

"A. Yes.

"Q. That item is found on what other page of Exhibit 22?

"A. Page 2.

"Q. On page 2 of Exhibit 22 the first item there 'One scale, $135.00'?

"A. Yes, sir.

"Q. The item of $770, fan scale sales is not found on any other page of this Exhibit 22 of the Defendant, is it?

"A. No, sir.

"Q. The next item, 2nd hand scale sales, $5,226. Where is that found on this Exhibit 22?

"A. Page 14 of Defendant's Exhibit 22. It is added to
642 the amount of or it is included in the amount of $5,246 which is added to the $94,820.35——

"Q. Yes.

"A. —representing the Exchange 2nd hand scale sales which were included in the Exchange Scale Allowance Account.

"Q. Now, where is your detailed analysis of those 2nd hand scale sales?

"A. It appears in the analysis on the credit side of the Exchange Scale Account. This is the analysis of the credits. (Hands papers to Mr. Zane.)

"Q. Now, where is your summary which shows that total of $5,226?

"A. (Witness produces papers.) It is shown on this miscellaneous column which is known as the Summary Analyses Exchange Sales Credits year to December 1, 1911.

"Q. What is your total on that page?

"A. $6,137.50.

"Q. How do you get from that $5,226?

"A. You deduct the item you see there of $770, which is fan scales also the item of $135, which is cylinder scales, also the item of $6.50 which is materials and supplies, so-called, the difference is $5,226.

"Q. Now, this summary sheet that you have produced here is your summary of the first produced detail?

"A. Yes, sir.

"Q. Those amounts which go to make up $5,226 you found as credits to the Exchange Scale Allowances?

"A. Yes, sir.

"Q. Were they credits to the Exchange Scale Allowances as the result of a computation appearing only as resulting in a difference or were they actual credits of those particular figures which you have shown in your detailed analysis on the credit side of the Exchange Scale Allowance Account?

"A. They were the actual credits, not the result of a computation.

"Q. Now, referring to your detailed analysis I see the item here $85.00, after which the word '1 National, 1'——

"A. I presume that abbreviation means Wilmington, I am not sure.

"Q. '1 Wilmington, 3 Dayton scales. Charge to Cordery. Short. Account.' Now where is that entry on the general journal, do you know?

643 "A. It appears in that column. It does not appear on the general journal.

"Q. That entry does not appear on the general journal at all?

"A. Not on the general journal.

"Q. Well, what you call the cash journal.

"A. Combination cash journal.

"Q. Combination cash journal.

"A. 'April' it says there, does it not?

"Q. No, March.

"A. And the voucher number is what?

"Q. 1071.

"A. It appears on the combination cash journal in the credit column of exchange scales under date of March 18.

"Q. And what's the amount of the entry?

"A. $85.

"Q. Any explanatory words there, any description?

"A. In the description column it says 'A. A. Cordery, shortage $278' and is placed in the debit column. In the credit column is says 'Agents supplies $13.00' and 'Repairs $2.00.'

"Q. So that that entry on the credit side—Well now what entry do you refer to as containing the $85.00 item?

"Mr. Meads: Answer, Mr. Bowman.

"A. The item appearing in the credit column of Exchange Scales $85.00.

"Q. Now, how do you ascertain that what the books fix and the ledger following it gives as a credit item to Exchange Scales should be transferred to some other account?

"A. I don't know as I understand your question exactly.

"Q. What you have done is to remove the credit from the Exchange Scale Account?

"A. Yes.

"Q. You have removed that $85.00?

"A. We have not removed it but we have treated it in our statement not in Exchange Scale Account but in 2nd Hand Sales Account.

"Q. Well, you have removed it as a credit in that account?

"A. Yes, sir, in stating our account.
"Q. And you have transferred it to 2nd Hand Sales?
"That's it.
"Q. Now, on what theory did you do that?
"A. By reference to the voucher and on the theory that
644 in treating that item it should be considered as sales and not as a reduction of the Exchange Scale Account balance.
"Q. Well, you did it from information from the voucher, did you, 1071?
"A. Yes, sir.
"Q. Will you give the Section and voucher number so we can get that voucher?
"A. Section 3, voucher No. 1071, March, 1911. (Mr. Zolg produces package of vouchers.)
"Q. Now, do you recognize the handwriting directing the entries at the bottom of that page (referring to bottom of voucher No. 1071)?
"A. No, sir.
"Q. Is not that Mr. Zolg's?
"A. I cannot say.
"Q. Now, this document reads:

"March 9, 1911.

Mr. Weiss:
Cy. Mr. Ginter:
Cy. Mr. Randolph:

Please charge to the shortage account of A. A. Cordrey, the following at the prices listed:

Scale #132 Blue—7275	77.50	
Scale #132 Blue—20449	80.00	157.50
National Scale #4702	15.00	
Wilmore Scale (from G. N. York)	15.00	
Dayton Beam Scale (from C. B. James)	15.00	
Dayton Beam Scale (from H. Castings)	12.00	
Dayton Beam Scale #29695	15.00	
#346 Sample Trunk E-291	25.00	85.00
#1 #346 blue iron stand	2.50	
3 #345 gold iron stands at $3.00	9.00	20.50
3 #345 blue iron stands at $3.00	9.00	
1 #80 nickel scoop	2.00	
1 #253 buggy board	1.00	
		278.00

You will then credit Cordrey's commission account with 30% on each of these scales at the prices given. Mr. Ginter will pull his various sheets covering these charges and show that they have been properly charged to Cordray's shortage account.

645 Legal Department.
FAC-MN. 30/18/11.

(On bottom of sheet in pencil appears the following:)

Dr. A. C. Cordrey Shtge. a/c 278 Sales	178.00
Ex. Scales	85.00
Agts.' Supplies	13.00
Repairs	2.00
Dr. Com. 72.75 A. A. Cordrey Acct	72.75

10–71."

"You recognize that as the same handwriting that's on the vouchers directing the form of entries, don't you?

"A. Well, I didn't as a matter of fact, pay any attention to handwriting because there are so many of them involved in this handwriting. I could not identify that with anybody.

"Q Well, it is in accordance with the directions on the bottom of that page in pencil that the entries are on the books, at least, so far as those exchange scales are concerned?

"A. No.

"Q. Is not the entry "Dr. A. A. Cordrey Shtge. a/c 278" on the journal entry?

"A. Yes.

"Q. Is not the entry——

"A. Wait a minute. Yes, that's all right.

"Q. Is not the entry "Exchange scales $85" on the credit side of the journal?

"A. Yes. But they may have been sales. They didn't complete it; they marked it "Exchange Scales".

"Q. The entry is "Ex. Scales".

"A. Yes. "$85.00" and that is entered on the journal.

"Q. "$85.00 and that is entered on the journal in Exchange Scale Allowances.

"A. Yes, sir.

"Q. $85.00?

"A. It does not say "Exchange Scale Allowances." You see that is not complete.

"Mr. Zane: I move to strike out his statement. I am asking for just what is here.

"Mr. Meads: He asked if it was not and he said "It may or may not have been."

646 "Mr. Zane: I waive the motion. The entry shows for itself.

"Q. Now the interpretation put upon that notation there by the person who made the entry on the books was to enter $85.00 credit Exchange Scale Allowances?

"A. It was.

"Q. Now, you treated this transaction of settling up a shortage in an agent's account as a purchase of scales, second hand scales?

"A. I didn't treat the settlement of his account. I treated that as a sale to him.

"Q. What particular transaction as a sale to him of 2nd hand scales?

"A. Yes, sir.

"Q. Now, I direct your attention to an entry on your detailed analysis in the month of February, to a transaction of $926.50. That is extracted as consisting of 1 Stimpson scale, 7 Toledo scales, test weights and scoop charges to W. J. Mercer's shortage account. We have had Mercer's shortage before. Now that is a transaction of the same character as this one?

"A. I treated that portion of the shortage account which represented those 2nd hand scales as a sale and have taken it out of Exchange Scale Allowances and put it in the 2nd Hand Scale Sales.

"Q. Yes. Now that voucher is No. 426?

"A. 426.

"Q. Of the month of April?

"A. The month of February.

"Q. The month of February, 1911, of what section?

"A. Section 5.

"Q. Section 5.

"Mr. Zane: Will you produce that voucher, Mr. Zolg?

(Mr. Zolg produces package of vouchers.)

"Q. Now, this voucher reads as follows:

647 "Feb. 2, 1911.

"Mr. Thall:

Please charge the following to W. J. Mercer's shortage account:

$120.00	covering scale #253 blue	65943
15.00	covering Stimpson scale	#55690
120.00	covering scale #254 blue	71732
135.00	covering scale #256 blue	66882
135.00	covering scale #256 blue	72597
135.00	covering scale #257 blue	70460
135.00	covering scale #346 blue	57965
125.00	covering scale #254 blue	56939
5.00	covering five #1 test weights.	
1.50	covering one #112 scoop.	
$926.50		

"Then charge W. J. Mercer's commission account with 40% of the above prices and credit these amounts to his account. The $5.00 charge and the $1.50 charge, of course, carry no commission credit. We are instructing Mr. Ginter to credit Mr. Mercer with this stock, as it is being charged to Mr. Mercer's shortage.

FAC-NM.

Act. Com. a/c. O. K. W. M. R.

Legal Department.

(On bottom of sheet in pencil appears the following:)

Dr. Mercer (Shotge.)	926.50	
Dr. Mercer (Com.)	368.00	
Cr. Exch. Scales		926.50
W. J. Mercer Acct.		368.00

4—26."

"Q. That is the way the voucher reads?

"A. Yes.

"Q. Now, below the voucher is the entry "Dr. Mercer (Shtge.) 926.50, Dr. Mercer (Com.) 368.00. Cr. Exch. Scales 926.50, Cr. W. J. Mercer Acct. 368.00" directing the entry.

"A. Yes, sir.

"Q. Now, that handwriting is the same as the handwriting on the former voucher, is it not?

"A. Well, I don't know. As I said before, there were a
648 number of people did writing on this voucher. I could not say that this is exactly the same as the one on the other one.

"Q. Now the interpretation put upon that direction there was to enter $926.50 under Exchange Scale Allowances as a credit?

"A. As a credit covering new fan, new cylinder and 2nd hand scales included therein.

"Q. Now, do you know of any other account that contains the words "Exchange Scales" on the combined journal except the Exchange Scale Allowances? You can look at the page right here.

"A. Just a minute (refers to yellow sheet). There is a 2nd Hand Scales Sales Account.

"Q. I asked you concerning the words "Exchange Scales", is there any account but the Exchange Scale Allowances?

"A. I think not.

"Q. Now, in this detailed analysis of yours, in a number of different entries you have the word "Split". What does that mean?

"A. It means that the allowance originally made on the scale—Wait a minute. Just strike that out. Where new scales, both fan and cylinder are sold in a combination and an exchange scale or old scale is taken in part payment at an allowed value it was the custom to show on the voucher the gross amount of the allowance that the agent made and thereafter charge back to the agent and credit the exchange scale allowance with the excess, and these item which are marked "Split" are those excesses allowed by the salesman which have been charged to their account and credited to the exchange scale allowances on that class of sale.

"Q. Now, opposite this entry "Split" you had first "$40.00" in the Undistributed column, you erased it there and transferred it over into the Cylinder column for exchange scales.

"A. Yes, sir, meaning that the cylinder scales got credit for the entire excess, that it was not split.

"Q. What does the entry "Split" opposite an entry first of the whole amount in the Undistributed column and then a division of

that amount, half and half into the Fan column and into the Cylinder column?

"A. That means that it was split between Fan and Cylinder half and half.

"Q. So the word "Split" in this connection means something different from the "Split" in the other connection?

649 "A. In that other connection, yes.

"Q. Well, now, in the month of May you made an entry of $100.00 opposite voucher 2869 followed by the word "Split"?

"A. Yes, sir.

"Q. $100.00 in the Undistributed column erased and the whole $100.00 put in the Cylinder column of Exchange Scales.

"A. The Exchange Scales, the Cylinder Scale business was given credit for that $100.00.

"Q. Yes, and what do you say the word "Split" there means?

"A. It is supposed to mean that there was a combined sale made of both fan and cylinder.

"Q. And you meant first to split that but then you didn't split it and put it all under Cylinders, is not that true?

"A. Gave the cylinder business credit for the entire amount.

"Mr. Zane: The voucher number is 2869 for May, Section 3. Is that here Mr. Zolg?

"Mr. Zolg: It is not here but I will get it.

(Mr. Zolg produces package of vouchers.)

"Mr. Zane:

"Q. The voucher which is produced as number 2869 is a carbon copy of the invoice which goes into the customer's account and is a carbon copy of an invoice to Wilke & Mitchell Company, Omaha, Nebraska, is it not?

"A. Yes, sir.

"Q. Now, where on that do you find the amount of $100.00?

"A. In the left hand corner of the voucher.

"Q. Does that show you that that amount of $100.00 is for sales of 2nd hand scales?

"A. No, sir, it shows that it is an excess allowance made by the agents on new sales where they took old scales in part payment.

"Q. This voucher in the "Old Scales" refers to that transaction?

"A. It does, so far as I know.

"Q. Now, where is the entry of $100.00 credited? That's a mistake. According to that, $100.00 is a credit to Exchange Scale Allowances?

"A. Yes, sir.

"Q. Now, where is that $100.00 debited, that's what I want to get at?

650 "A. It is contained in the amount of $425.00 on the right hand side of the voucher deducted from the total sales which shows the amount that the salesman allowed for scales No. 346 Blue, No. 46723 and 46686 and one No. 50 Blue No. 16284.

"Q. Have you got the entry debiting exchange scales $100.00.
"A. No, sir, I have an entry crediting Exchange Scale Account $100.00.
"Q. Yes. That is entered from this voucher.
"A. Yes, sir.
"Q. Who is debited with that $100.00?
"A. The salesman is debited with $109.37 which includes that $100.00.
"Q. The salesman was credited with $109.37?
"A. The salesman was debited——
"Q. Oh, debited, I mean.
"A. —with $109.37.
"Q. Now, what was the $9.37 for?
"A. As a balance of his commission presumably which was credited to his prospective commission account. Wait a minute. That -as not charged to the salesman, it was credited to commission account $109.37.
"Q. And exchange scales debited $100.00.
"A. No, exchange scale sales was credited with $100.00.
"Q. Well, now according to this voucher the original sale here was for $750.00 consisting of 6 scales?
"A. Yes.
"Q. Now many of them were cylinder and how many fans?
"A. 3 were cylinder and 3 were fans.
"Q. Yes. Now the cylinders sold at $160.00 apiece?
"A. Yes.
"Q. The fans sold for how much?
"A. 1 at $100.00, another at $100.00 and the 3rd at $70.00.
"Q. Yes. They got in exchange for that sale, $750.00, how much and what was it?
"A. They were to receive two No. 346 Blues, No. 46723 and 46686 and one No. 50 Blue 60284, for which the salesman had allowed $325.00 to apply on the selling price of new scales.
"Q. Yes. And they were to receive also?
"A. $25.00 in cash.

"Q. And the balance of the $750.00 above, $25.00 and
651 $325.00 was secured by what? "Balance monthly payments secured by note," was it not?
"A. Yes.
"Q. Then below the notes are detailed and are ten notes at $40.00 each?
"A. Yes, sir.
"Q. And that represents the credit by cash and notes $450.00.
"A. Yes.
"Q. Leaving $325.00 the balance due?

"Mr. Meads: No, $325.00 allowance.

"Mr. Zane:

"Q. Is not that opposite the words "Balance due," $325.00?
"A. Yes, sir.

"Q. Now, that balance due was wiped out by the receipt of those exchange scales?

"A. When the scales came in.

"Q. The agent was allowed on the transaction $109.37 as a commission?

"A. Yes, sir.

"Q. $100.00 was credited to Exchange Scale Allowances?

"A. Yes, sir.

"Q. Debited to whom?

"A. To the agent.

"Q. Is that on the journal?

"A. Yes, sir, in a net figure. There is where he is credited in the Prospective Commission Account, is credited with $9.37, which is the net of the commission as shown on that copy of the voucher, $109.37 less the $100.00 credited to Exchange Scale Allowance Account.

"Q. Well, what was the Commission Account debited?

"A. The Commission Account was debited with the total commission.

"Q. $109.37?

"A. Yes, sir.

"Q. Now, the $325.00, that was allowed, where was that charged?

"A. That has not as yet been charged off that voucher. It was charged subsequently when those three exchange scales were either returned to the factory or delivered to the branch manager or agent's headquarters.

"Q. Now were those Toledo allowances?

"A. They should be Toledo allowances.

"Q. They should be in the Toledo Allowance Account?

652 "A. When the scales come in they should be charged to Toledo scale allowances.

"Q. Well, do you know whether the transaction was ever finished or not, did they come in?

"A. I would have to refer to the acount, customer's pink sheet, to ascertain whether those scales came in.

"Q. Well, what part of $100.00 that you are taking out of the Exchange Scale Allowances ought to have been taken out of the Toledo Exchange Allowances?

"A. I just don't understand the question.

(Question read.)

"A. Well, all of the $100.00.

"Q. Out of the Toledo?

"A. Yes, should have gone into the Toledo Scale Allowance Account.

"Mr. Zane: Now, the next voucher we want is for September, Section 3, No. 6456.

(Mr. Zolg produces package of vouchers.)
(Witness points out voucher No. 6456.)

"Q. Now, the voucher produced is a carbon copy of the invoice found by the original customer's ledger.

"A. Yes, sir.

"Q. It shows a sale of 5 scales, does it not?

"A. Yes, sir.

"Q. How many of them are cylinders and how many fans?

"A. There are 3 cylinders and 2 fans.

"Q. Now, the total purchase price was $855.00?

"A. Yes sir.

"Q. No-es were executed for the total amount of how much money?

"A. $575.00.

"Q. $50.00 was paid in cash?

"A. Yes, sir.

"Q. And $230.00 was an allowance made for the 4 No. 61 Daytons and 2 No. 38 Daytons?

"A. Yes, sir.

"Q. Now the $230.00 was a total allowance that was how much too great according to the voucher?

"A. $80.00.

"Q. So that the agent was credited with how much commission?

"A. $166.75.

"Q. And the $80.00 was charged to the agent?

653 "A. No, sir, not after that. He was credited with the difference between $246.75 and $80.00 or $166.75.

"Q. Now, the $80.00 was split by you according to your detailed analysis, split into fans and cylinders.

"A. Yes, sir.

"Q. $30.00 for fans, $50.00 for cylinders.

"A. Yes, sir.

"Q. Now, why didn't you split the $100.00 in the other case that we have just had, that was a joint sale of fans and cylinders.

"A. I presume in this case if you will notice from this voucher that this transaction is not complete for the reason that the scale numbers do not appear.

"Q. The scale numbers?

"A. The scale numbers sold, you see. When the scales are actually delivered they insert the numbers in these vouchers. That indicates that the scales have been shipped but in this case the scales have not been shipped and I cannot say whether this transaction was completed within the year and whether only the commission and the allowance were handled or only the allowance, I am not certain as to that but in this case I presume the reason that was done was to as equitably as possible divide that particular transaction between fan and cylinder.

"Q. Yes. So that was not an exact allocation then, it was just an equitable distribution of the $80.00.

"A. Not in that particular case.

"Q. Yes, not, then in the other case of $100.00 which was a credit on Exchange Scale Allowances, you took that out but you didn't split it at all.

"A. Not on that working paper. It may have been ultimately split when the scales themselves, that is, the returned scales came back, that allowance may have been picked up again and included in that distribution.

"Q. Can't you follow that $100.00 through your working papers, can't you find that $100.00?

"A. I would have to refer to the voucher or rather to the customer's ledger account, to the accounts receivable ledger file to give you the full particulars as regards that $100.00.

"Q. But you have taken it as a credit away from Exchange Scale Allowances and you have put it into 2nd Hand Scales.

"A. No, sir, on the contrary——

654 "Q. Well, where have you put it?

"A. Exchange Scale Allowances, the debits which were allocated between cylinder business on the one hand and fan business on the other. In this particular $100.00 transaction, the cylinder scale business, that is, the allowances charged against the cylinder scale business have been reduced by that $100.00.

"Q. Yes. Now, in the other case, the $30.00 and $50.00 of a division is split between fans and cylinders?

"A. Yes, sir.

"Q. Because there was a joint sale of fans and cylinders.

"A. There was a joint sale of fans and cylinders that had not been completed. That is the reason I assign for that arbitrary split there.

"Q. Now then, in the other case you had an allowance of $325.00 for cylinder scales.

—. ——.

"Q. $425.00. That allowance was not apportioned as between the Toledo and exchange scales taken in, was it?

"A. It was when it came in, if it came in the year 1911.

"Q. Well, on that voucher it was not, was it?

"A. None of them are.

"Q. Are not you mistaken in stating the allowance was $325.00, it was $425.00.

"A. I said $425.00.

"Q. It was $325.00, was it not?

"A. The allowance was originally $425.00.

"Q. Look at the voucher and see if the allowance was not $325.00?

"A. What was the voucher number?

"Q. 2969.

"A. (Examining voucher.) The allowance was, yes it was, $325.00.

"Q. $325.00, yes.

"A. $325.00 for 3 scales.

"Q. Now, that allowance is charged all against the cylinders according to the way the Company kept its books?

"A. No.

"Q. It was not?

"A. No, sir. It was not charged to either of them, it was charged to Exchange Scale Allowances Account. They made no division.

"Q. There was no division made at all as between the two?

"A. No, sir. Either one, fan or cylinder, they charged it
655 all to an account called Exchange Scale Allowances, that is, if it happened to be a scale of other makes.

"Q. Did you reform that allowance?

"A. It was reformed, if the allowance made on this transaction covering those scales was made when the scales were received, if they were received in 1911 by a credit to the customer's account and a corresponding charge to the Exchange Scale Allowance Account.

"Q. Now, both of those amounts, $100.00 and $80.00 are a part of this total of $5,226.00 on page 7 of exhibit 22?

"A. No, sir.

"Q. They are not?

"A. No, sir.

"Q. I thought you said that this working sheet which you produced here contained the total of your transfers constituting the $5,226.00.

"A. Yes, sir, it does, but that particular item you refer to or those particular items when you refer to, are not included in that $5,226.00.

"Mr. Meads: That 2nd hand scale sales, that $5,226.00.

"Mr. Zane:

"Q. Those amounts are not found on your outside column here on your general summary?

"A. No, sir.

"Q. Now, did you prorate that $230.00 allowance on the same basis that you prorated the $80.00?

"A. I would have to refer to the voucher and find out whether the $230.00 was taken up on the books in 1911 to answer your question.

"Q. If it was not taken up on the books in 1911, then you didn't prorate that $230.00 at all.

"A. It would not be prorated because we would not handle the figure, it would not come in, you see it is an overlapping in 1912.

"Q. It would not come in at all?

"A. The same as the over-lapping from 1910 to 1911. It is one of those items where the sale was made in 1911 and it did not come back until 1912.

"Q. Did you prorate the $100.00 in the voucher 2869 on the same principle you prorated the $80.00 in the voucher No. 6456?

"Mr. Meads: I think I will have to object. The witness has said he could not tell whether he prorated it at all until he saw whether the scales actually came in for which the allowance was made.

656 "The Master: Objection overruled.

"A. In the case of the $100.00——

"Mr. Zane:

"Q. Just answer yes or not.
"A. I cannot answer yes or no.

(Question read.)

"A. Manifestly not.
"Q. All right. Did you follow out that $230.00 allowance to see whether it came in 1911 or 1912; have you any knowledge on the subject?
"A. I have not without referring to the customer's ledger account itself. In either case I have no knowledge.
"Q. Would the customer's ledger account show you when the allowance came in, the scales?
"A. It would show when the scales came in, yes, sir.
"Q. Didn't you have to know that fact before you could distribute your $80.00, didn't you have to know it?
"A. Well, it should have been known, but as I say, in that case the credit came through long before the sale was made, the sale was finally consummated and in that case an arbitrary apportionment was made between cylinder and fan. Now, it may have ultimately came through and that credit by reason of a further adjustment was brought out and properly adjusted.
"Q. Then that is not an allocation, that's an arbitrary apportionment.
"A. In that particular case, it is, but it is not arbitrary in the sense you say it is arbitrary. It is probably allocated on the commissions that were paid.
"Q. We don't care for what was probably the case. Now, in your next item in your Exchange Scale Allowance Account on page 7 of your Exhibit 22 are deductions from the Exchange Scale Allowance, the first deduction is $597.82. The book balance was made up on the basis that those $597.82 were in the Exchange Scale Allowance Account, was it?
"A. Do you mean the debits?
"Q. The balance of the account was made up on the basis that $597.82 which you have deducted was in the account.
"A. Yes, sir.
"Q. You considered that ought to be in the Special Allowance Account, $597.82?
"A. Yes, sir.
"Q. Your next two items are of the same character, that is, the books show one thing and you have reformed the entry in
657 the account as it is made on the journal and the ledger in regard to Exchange Scale Allowances.
"A. Yes, sir.
"Q. Your next item of $1,584.50 is an item taken out of this Exchange Scale Allowance Account and put into cylinder scale charge backs, is it not?
"A. Yes, sir.

"Q. Now, how was the composite entry made on the books by which a balance went into, a balance ascertained by the composite entry, went into the Exchange Scale Allowance Account? What do you mean by a composite entry?

"A. First, I will define a composite entry as I understand it.

"Q. What do you mean by your statement in the account here "Amount of price allowances abrogated, by reason of repossession of new scales, on which such allowances were made, not previously written back to the credit of this account as they should have been because of the repossession having been recorded by means of a composite entry which was charged to 'Charge Backs' Account". What do you mean by a composite entry in that connection?

"A. In that connection I will define this particular kind of a composite entry. When the sale of new scales was made there an allowance was made on old scales taken in part payment and the new scales together with the old scales were repossessed, there was a balance remaining to the customer's account of the unpaid portion of the new scales account, which the Accounting Department merely wrote off or handled or treated, as the case may be, by crediting the customer and charging the Charge Backs with that unpaid portion of the balance. In those cases the company had received an exchange scale for the one scale and a forfeited installment. When those transactions of that nature came in the correct way would have been to have charged Charge Backs with the full sales value of the new scales, credited forfeited installments with the amount paid and credited Exchange Scale Allowance Account with those exchange scales which had been taken in part payment of that account and this entry is made to correct those transactions.

"Q. Well, when the new scales were repossessed the scales taken in exchange were not given back, were they?

"A. No, sir.

"Q. In what other place in this account is that item of $1,584.50 entered?

658 "A. On page 3 of Defendant's Exhibit 22.

"Q. It appears there as an addition to the Charge Backs Account.

"A. Yes, sir.

"Q. Now, the next item, fan Scale Charge Backs. That item does not appear anywhere else in Exhibit 22.

"A. No, sir.

"Q. By these various additions and deductions you make the Exchange Scale Allowance Account $102,177.52.

"A. Yes, sir.

"Q. As per the books that account is $99,047.24.

"A. Yes, sir, as per the general ledger.

"Q. Now, let us see your detailed analysis of the distribution of this Exchange Scale Allowance Account and the summaries that were marked Exhibits 50 and 51.

"A. (Witness produces documents).

"Q. Now, you find, do you not, that the great mass of this Exchange Scale Allowance Account for the first months are allowances made on sales in the year 1910 or before 1910, don't you.

"A. A number of them are, yes, the early months of the year.
"Q. Well, see if I read them in order correctly, the different transactions, as you have got them one right after the other: 1910, 1909, 1910, 1911, 1910, 1910, 1910, 1909, 1910, 1910, 1910, 1910, 1910, 1910, 1910, 1910, 1910, 1910, 1910, 1910, 1911, 1910, 1910, 1911, 1910, 1910, 1910, 1910, 1910, 1910, 1910, 1910, 1910, 1910, 1910.

Now, I have read the first page, have I, or rather the second page of your detailed analysis?

"A. Yes, sir.
"Q. And those years show when the original sale took place?
"A. Yes, sir.
"Q. Now, you have produced the summary of this account, have you not, also?
"A. Yes, sir. You have it over there. (Indicating).
"Q. Is this the final summary, this is the whole, the summary of the whole of the detail sheets?
"A. Yes, sir.
"Q. Now, on the third page of this detailed analysis all the entries on that page are 1910 except two.
"A. No, sir.
659 "Q. What do you find, tell me how many do you find of 1910?
"A. There are two of 1911 and there is one of 1909.
"Q. That's before 1910.
"A. Yes, sir.
"Q. And all the rest are 1910?
"A. Yes, sir.
"Q. The same number of lines are on this page as on the page which I just read.
"A. Yes, the same number of items.
"Q. Well, how many items are on this page?
"A. 36.
"Q. And of those two are for 1911?
"A. Yes, sir.
"Q. One *if* for 1909?
"A. Yes, sir.
"Q. And the rest for 1910?
"A. Yes, sir.
"Q. On your next page how many 1911 items have you?
"A. 3.
"Q. And how many in all?
"A. 18.
"Q. And all the rest beyond the 3 for 1911 are 1910 items, are they not?
"A. Yes, sir.
"Q. Your next page is constructed on a different plan, is it not, from the former page?
"A. Yes, it is.
"Q. A different man was working on it, was that it?
"A. Well, these half sheets which you see relates to a particular

voucher where there were perhaps 35 or 40 exchange scale transactions on them and these again are carried into the other sheets.

"Q. They are carried into the larger sheets?

"A. Yes.

"Q. Now, your next sheet in February, 1911, contains how many items?

"A. 32.

"Q. How many of those have you marked 1910?

"A. 17 I marked 1910. The balance are current for 1911.

"Q. Now, your method of work was to take a particularly large voucher and carry it out on one of these narrow sheets and then the result of that was carried into the wider sheet.

"A. Yes, sir.

660 "Q. Now, you kept that up for how many months?

"A. 3 months.

"Q. And then beginning on——

"A. Sestion 1, April.

"Q. Is there where your April work begins (indicating)?

"A. That's where it begins.

"Q. After that you did not mark the years except in particular instances.

"A. Well, the scheme of adjusting the Exchange Scale Allowances between years after consultation with my superior was abandoned for the reason that do so——

"Q. Well, you need not give us the reason. It was abandoned.

"A. I was going to complete it by saying why it was abandoned.

"Q. We don't care for that. Now, the first sheet I see here of April, 1911 contains items of Exchange Scale Allowances referring to 1910 sales marked in how many instances?

"A. Out of 36 items, 10 are marked 1910.

"Q. Count again.

"A. 12 of them, excuse me.

"Q. Now, in making these so-called allocations by detailed analysis of the Exchange Scale Allowance Account you simply allocated to cylinder scale business, you didn't allocate to specific cylinder sales?

"A. No, not in the sense that I think you mean, we did not allocate them to the specific sales, but applied the allowance made against the business or the profits of the business of the cylinder and fan as they were taken up on the books in 1911.

"Q. Well, in cases where you referred your Exchange Scale Allowances to the year in which the sale took place you had reference to the original sale, had you not?

"A. No, not in every case.

"Q. Where did you get that figure?

A. That was taken from those vouchers where you see the notation mark "C/10", "F/10" and "C/11", "F/11", etc.

"Q. Well, you found a great number of cases where you allocated Exchange Scale Allowances to cylinders where the notation "C/10" was not on the voucher, didn't you?

"A. In those cases we started, if you will notice on those sheets, an undistributed column which was a temporary measure and

those which were not marked either "C" or "F" and giving
661 the year, not always the year would stop us so long as they were marked "C" or "F," they were placed in that column as a temporary measure, as I said, and then reference was made to that customer's accounts receivable ledger where we determined whether it was a cylinder or fan and after the three months which I speak of we abandoned putting the years down but simply got the information as to whether it was a cylinder or a fan.

"Q. Now, when you had a sale of cylinders and fans together in one sale and an exchange allowance, exchange scale allowance against the whole sale, cylinders and fans, how did you distribute that allowance undistributed on the voucher between cylinders and fans?

"A. Originally that was distributed on our papers between cylinder and fan business in the same manner in which the company credited the agent's commissions and the matter was taken up with Mr. Seatree and he gave his own opinion—

"Q. Well, we don't care for Mr. Seatree's opinion.

"Mr. Mead: Say how you did it, Mr. Bowman.

"A. It was originally, as I said, divided between cylinder and fan business in the manner in which the company had credited commissions to the agents and thereafter a reallocation was made on this more equitable basis which has been spoken of heretofore.

"Q. Now, when you looked at the commission and saw that the commission on cylinders was computed on the amount of cylinder sales less all the exchange scale allowances, you went to work and reformed that commission?

"A. The allowance on the commission, yes, sir.

"Q. And on the strength of which you reformed the allowance.

"A. Yes, sir.

"Q. Do those figures, $84,793.27 represent your reformation of the allowances?

"A. They do.

"Q. Exchange Allowance Account?

"A. They do.

"Q. I draw your attention to an entry upon one of your working sheets, "Exchange sales", you have got it marked at the top. You didn't write that, did you?

"A. No.

"Q. You mean scales. Who did write that, you didn't of course?

662 "A. Well, let's see, maybe if you'll look at the top here you will find who wrote it,—get the division here (Examining paper) I could not say who that was written by. I can guess at it.

"Q. Well, he means exchange scales.

"A. He means Exchange Scale Allowances.

"Q. Well, he wrote there "Exchange Sales."

"A. Yes.

"Q. But the word "sales" he means to write "scales"? didn't he?

"A. Yes, sir.

"Q. Now, on this page, which is in the month of December, Sec-

tion 2, you have an item here, the very last one, voucher No. 9420, and then next is the amount $520.00. Is that the allowance?

"A. That's the amount of the allowance on voucher No. 9420, yes, sir.

"Q. You have distributed that $15.00 to two fan scales sold and $505.00 to eleven cylinder scales sold.

"A. No, sir.

"Q. What does your figure "2" before $15.00 mean?

"A. That means the number of exchange scales taken in.

"Q. Oh, there were two fans then taken in and 11 cylinders, is that what you mean?

"A. No, sir. There were two scales or other makes taken in on new fan sales and eleven scales of other makes taken in on cylinder sales.

"Q. Where did you get the basis for valuing the two scales taken in, fans, at $15.00?

"A. Attached to the voucher which you have you will find a sub-voucher which analyzes that $520.00.

"Q. Where is that sub-voucher?

"A. There it is, sir. (Indicating) on the fourth page after the main voucher.

"The Master: The fourth page of what?

"A. Of the working sheets.

"Mr. Zane:

"Q. Now, on the voucher were the allowances apportioned between the fans and the cylinders?

"A. I think they were.

"Q. Well, do you know?

"A. Yes, I am reasonably certain that they were.

"Q. That's voucher No. 9420?

"A. Yes, sir, except as to this one item here, (Indicating)
663 the reason that was put out here—"L. Deister" was because it was not shown on the voucher whether it was cylinder or fan scale business and reference was made to the customer's ledger account.

"Q. But we are talking about the value of the scales taken in exchange. You have distributed $15.00 of the total value of those scales to fan scales and you have distributed $505.00 of that total value of $520.00 to cylinder scales. Now, what is there in your detail of voucher 9420 that tells you the value of the scales taken in?

"A. Well, I don't know to what you refer when you say "Value."

"Q. A scale taken in exchange for a fan is valued at $10.00, is it not?

"Q. That is, an allowance of $10.00 was made on an old scale taken in exchange for a new fan sold.

"Q. That's the value set upon that scale taken in exchange in the allowance, $10.00 is what they allowed for it?

"A. They made an allowance of that $10.00. That does not necessarily measure the value.

"Q. That's the value set upon it for that particular transaction.
"A. I don't know.
"Q. It was an allowance made for that scale.
"A. It was an allowance made of $10.00.
"Q. Now, on that voucher does it appear that $10.00 was the allowance made for a scale taken in exchange on a fan?
A. Upon reference to the voucher I am confident it will.
"Mr. Zane: 9420 is the voucher, December, Section 2.

(Mr. Zolg produces package of vouchers.)

"Q. The voucher you have produced, 9420, shows one total settlement to exchange scales of $520.00.
"A. Yes, sir.
"Q. Now, is there a debit to that?
"A. Yes, sir.
"Q. Well, we will have to mark that, I guess, and go at that tomorrow morning, but let me ask you another question before court adjourns.
"On a page of this detailed analysis do you see that allowance of $230.00 to Otto Shotts where that $80.00 enters?
"A. Yes, sir.
"Now the distribution as between fans and cylinders in the allowance was $7,666 fans, $153.34 to cylinders?
664 "A. That was the original way it was allocated.
"Q. Yes.
"A. The manner in which the commissions were paid until it was revised according to the new theory.
"Q. Now, that $80.00 you did not distribute on that basis of this distribution between fans and cylinders of the $230.00, did you?
"A. I don't know unless I would figure it out. I suppose approximately it was. You have reference to the credit of $80.00?
"Q. The $80.00.
"A. Well, when the new theory was introduced in this, the credit as well as the debit was picked up and the adjustment of both sides of it was made.
"Q. Mr. Bowman, on Exhibit 21 turn to page 1, the statement of the profit and loss account. You have stated there in the column under the head "New Cylinder Scale Business", sub-head "Revenues" the results of your reformation of the Toledo Scale Allowance Account and of the Exchange Scale Allowance Account, have you not?
"A. Yes, sir.
"Q. The words read, on page 1 of the Exhibit 21 of the Defendant, as follows: "Price Allowances on Scales sold in 'Trade' for old scales taken in (charged according to the amounts actually allowed on each scale sold)". That statement is not true, is it?
'A. I just don't get your question there.

(Question read.)

"A. I would say it was true.

"Q. "Allowed on each scale sold". "Charged according to the amounts actually allowed on each scale sold?"

"A. Yes, I would say it was true.

"Q. Have not you stated that you did not allocate the allowances with reference to specific scales sold?

"A. I don't get the connection between this and your other question.

"Q. Answer my last question.

(Last question read at request of witness as follows: Have not you stated that you did not allocate the allowances with reference to specific scales sold?)

"A. Well, the allowances were allocated.

"Q. Just answer that question. Have not you stated that?

665 "A. I don't recall. I don't recall to what particular question you have reference.

"Q. Didn't you answer yesterday when you were asked whether you had referred and distributed and allocated the allowances with reference to particular sales of scales for which these allowances were taken in exchange that you did not allocate, to use your word, the items of allowance to particular sales of particular scales, didn't you state that yesterday?

"A. I don't recall having stated it that way.

"Q. But you did say that you referred the allowance account simply to the cylinder business, not to particular scales sold in the cylinder business, didn't you state that?

"A. Well, I don't get the connection there. If you are allocating them between cylinder and fan scale business, you must necessarily allocate them to specific sales because they originate out of specific sales.

"Q. Do you mean now that you referred those allowances to particular sales of particular scales?

"A. Yes, sir, they are in a way; they are.

"Q. I thought you stated you reformed the allowances from what they are on the books to what they should have been in your judgment according to an equitable basis.

"A. You don't get the connection there.

"Q. Did you state that?

"A. I don't recall having stated it like that.

"Q. All right. Now, do you also say as to this Exchange Scale Allowance that these words are true 'Charged according to the amounts actually allowed on each scale sold,' do you claim that those words are true?

"A. I don't see any defect in them. They convey the indicated meaning.

"Q. Are they true, that those amounts of allowances are charged according to the amounts actually allowed on each scale sold?

"A. Subject to the revision that was made as I spoke of yesterday.

"Q. Subject to the revision that was made that you spoke of yesterday. Now, do you mean that that statement as it stands there,

that the price allowances on the Toledo Scales and on scales of other makes taken in are charged according to the amounts actually allowed on each scale sold, is a true statement without any qualifications on it?

"A. It must be qualified to take in the point, quite so.

666 "Q. Now, irrespective of your reformation of the Allowance Accounts, is that statement true, that the allowances are charged according to the amounts actually allowed on each scale sold?

"A. I should say yes.

"Q. Have you not got a lot of allowances in there that are not allowed on the scales sold in 1911 which you have above this amount in your column but are allowances allowed on scales sold in 1910?

"A. Yes. I answered that yesterday and told you by the same token that there were sales made in 1911 in which the scales would not be returned until 1912.

"Mr. Zane: We move to strike out his last statement.

"The Master: That may be stricken.

I think there is a misunderstanding right here between you and the witness.

"Mr. Zane: I don't think so. He sees the point.

"The Witness: I have attempted, if the Master please——

"Mr. Meads: Wait a minute. Let him put a question, Mr. Witness.

"Mr. Zane:

"Q. What is your explanation of the words 'Charged according to the amounts actually allowed on each scale sold'?

"Mr. Meads: Now, give your explanation.

"A. By that is meant that these allowances, both as regards Toledo scales and scales of other makes, are divided between cylinder and fan business irrespective of whether the sale of the new scale was made in the year previous or in the current year on the basis of, or rather, put it this way, in the manner in which the company applied those allowances in calculating commissions of the agents, which to our way of thinking was inequitable and there was a revision made as heretofore stated by using a theoretical basis of apportionment.

"Q. Does not the phrase 'Charged according to the amounts actually allowed on each scale sold' presuppose that you have analyzed the account and referred the amount charged to an amount actually allowed on each particular scale sold?

"A. Yes, sir.

"Q. That's what it means?

"A. Yes.

"Q. Hence you must have referred those amounts and fixed them with reference to particular scales sold?

667 "A. Yes.

"Q. And you fixed a particular amount that goes to make up the total with reference to a particular scale, didn't you?

"A. Yes, sir.

"Q. You didn't do that in making up your account?

"A. No, sir. I have explained why.

"Q. On page 10 of Exhibit 22 of the defendant your first item on that page is 'Commissions as per books $357,427.55.' Whose books do you refer to?

"A. The Toledo Scale Company's general ledger.

"Q. And any other book?

"A. The combination cash journal.

"Q. Now, on that page you have certain deductions, the first series of deductions are four amounting to $196.35. Those are merely shiftings of amounts from one account to another, are they not?

"A. Yes.

"Q. The next item 'Commissions on Installments received from the customers prior to Repossession by the Company which were forfeited and accordingly treated as "Forfeited Installments" in the accounts prepared by Price, Waterhouse & Company. This entry required to transfer amount of commissions applicable thereto $7,603.54.' Those commissions on forfeited installments include both fans and cylinder scales, do they not?

"A. Yes, sir.

"Q. Was that amount, $7,603.54, worked out by a detailed analysis?

"A. No, sir.

"Q. How did you work it out?

"A. The first three months of 1911 were actually tested out, but it was discovered that to continue on down to the end of the year would be impossible with the time at our disposal, so we used the results of the first three months of the year as a basis for an average for the balance of the year.

"Q. How did you use it, tell us how you arrived at $7,603.54.

"A. Well, if I recollect the calculation correctly, it was: The forfeited installments were arrived at for the first three months and the commissions which were given to the agents on those forfeited installments, and one was applied against the other to de-
668 termine a ratio and that ratio was used as an average for the entire year.

"Q. Well, what did you find your ratio to be?

"A. I do not recall just now.

"Q. Well, look it up and see. Ratio of commissions to forfeit-d installments, what did you find it to be?

"A. About 31½%.

"Q. What figure did you divide into what other figure?

"A. The total of $24,083.84 divided into $7,603.54.

"Q. Oh, well, that is not right at all. That is not the way you got it, is it? What does that $24,000 contain? Does not that contain freight? Look on your page 14, what's the total amount of your forfeited installments?

"A. $24,083.84.

"Q. Well now, how much of that is actually forfeited installments and how much——

"A. That's all forfeited installments.
"Q. What's the total amount of it?
"A. $24,083.84.
"Q. Yes. Now, you got your ratio on a three months' basis?
"A. Yes, sir.
"Q. You must have taken the forfeited installments for three months, didn't you?
"A. I think we did, yes.
"Q. Don't you know?
"A. Yes, I know.
"Q. Yes. And you took the commissions for three months and you divided one into the other to get your ratio, didn't you?
"A. Yes, sir.
"Q. Now, those two figures are what I wanted. You didn't divide your total of forfeited commissions into your total of commissions because you didn't have your total of commissions?
"A. Well, it would take me some time to get that for you.
"Q. Well, at any rate you divided the first three months of forfeited commissions into the first three months of forfeited installments, is that it?
"A. Well, I divided the commissions—What I did was used the commissions that were allowed to the agents on the forfeited installments for the three months of the year, the first three months of the year, as a basis on which to calculate.
669 "Q. That does not mean anything. What figures did you use to arrive at your ratio?
"A. Well, to be correct, I used the forfeited installments as a total, dividing them into the commissions that were paid to arrive at the percentage.
"Q. Well, forfeited installments for how long into commissions for how long?
"A. The first three months of the year.
"Q. And that ratio is the ratio that will exist between the total amount of forfeited installments and $7,603.54?
"A. It should be.
"Q. Now, you took those commissions then and transferred them out of this Commission Account as a charge or an expense in the 2nd Hand Scale Account?
"A. Yes, sir.
"Q. You did that on the theory that whenever a repossession of a scale took place and there was a forfeited installment you reversed the whole transaction?
"A. Not reversed it, but brought it out into its elements.
"Q. Why, didn't you over in your Charge Back Account add to the Charge Back Account the amount of forfeited installments?
"A. Yes, sir, and set them aside in the Forfeited Installments Account.
"Q. And created a Forfeited Installments Account?
"A. Yes, sir.
"Q. And then that Forfeited Installments Account you transferred bodily into the 2nd Hand Account?

"A. Yes, sir.

"Q. Therefore you reversed the whole transaction, didn't you?

"A. Yes, sir.

"Q. And does not your Exhibit 22 say so on page 3? Don't you say there, "Instead of reversing the entire transactions and thus relieving the various accounts involved of the respective amounts credited or charged to them?" The books did the other thing, but you have reversed the entire transaction and the results you have transferred into 2nd Hand Accounts, that's what you have done, is it not?

"A. Yes, sir.

"Q. Now, your reversing the transaction that took place when the scale was forfeited was that the company got back a scale and the company kept some money it already had, that was the transaction, was it not?

670 "A. Yes, sir.

"Q. The transaction for the year or the transaction had taken place in the year 1910 in a great many cases, had it not?

"A. Yes, sir.

"Q. So after the accounts were closed for the year 1910 you reversed a transaction and charged something against scales sold in 1911 which you obtain by reversing a transaction that took place in 1910, don't you?

"A. Charge the loss on the transaction of, the loss on the transaction which occurred in 1911 on a sale made in 1910 against the profits of the business in 1911?

"Q. Read my question to him, and answer it yes or no.

"Mr. Meads: I submit the witness has answered the question.

"The Master: That's susceptible I think of an answer yes or no. (Question read.)

"A. No.

"Q. The sale took place in 1910, didn't it?

"A. Yes, sir.

"Q. You reverse the sale, don't you?

"A. It depends on when the sale was finally consummated.

"Q. I say assume a sale that took place in 1910. You say there are many of them here. Assume a sale that took place in 1910. When you in 1911 reverse that transaction you are reversing a transaction that took place in 1910, are you not?

"A. Yes, in effect you are. It charges the loss on that transaction of a sale made in 1910 against the profits of the year 1911.

"Q. Exactly. The entry that was actually made was this, was it not: A scale is repossessed upon which $10 had been paid. The books, the cash book and the ledger, charge the difference between the forfeited installment and the total selling price of the scale to the Charge Back Account, don't they?

"A. Yes, sir.

"Q. If the scale sold had sold for $150 and $10 were forfeited, $140 should be charged to the Charge Back Account according to the cash journal and the ledger?

"A. Yes, sir.